Ministry of JUSTICE

# Outcomes of applications to court for contact orders after parental separation or divorce

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## Acknowledgements

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## Disclaimer

# Chapter 1: Introduction

This report was commissioned by the Ministry of Justice (formerly the Department for Constitutional Affairs) in 2006, to examine the outcomes of applications to court for contact orders after parental separation or divorce. The principal element in the study was an analysis of court files on cases where an application for a contact order was made under Section 8 of the Children Act 1989. This data was supplemented by an examination of transcripts on a sub-sample of court hearings and interviews with judges, magistrates, lawyers and officers of the Children and Family Courts Advisory and Support Service (Cafcass).

## Background

Around a quarter of the 12 million children in the UK are affected by their parents' separation or divorce (DCA, DfES, DTI, 2004). Although a substantial minority will live in shared care arrangements, spending roughly equal amounts of time in each parent's household, (Peacey and Hunt, 2008), around 90% will reside mainly with one parent, typically the mother.

Research indicates that most children in separated families want to stay in touch with their non-resident parent and find the loss of contact painful. Even where there is contact a substantial minority want more (Hunt, 2003; Dunn and Deater-Deckard, 2001; O'Quigley, 1999). Contact also has many potential benefits for children (Pryor and Rodgers, 2001). These were summarised in an 'experts' report to the Court of Appeal (Sturge and Glaser, 2000) as: meeting a child's needs for warmth, approval, feeling unique and special; extending experiences and developing or maintaining meaningful relationships; providing information and knowledge; and enabling distorted relationships or perceptions to be corrected. A close relationship with both parents is also associated with children's positive adjustment after divorce (Rodgers and Pryor, 1998).

The evidence for the actual value of *contact*, however, is contradictory and tends to show that it is the quality of the relationships and the parenting offered by the non-resident parent which matter more than the frequency (Gilmore, 2006; Hunt, 2004; Pryor and Rodgers, 2001). Clearly in some circumstances, such as where there is poor parenting or even abuse, contact can be very damaging. Research also highlights the risk to children of being caught up in parental conflict, which is one of the key factors affecting outcomes for children after parental separation (Harald and Murch, 2005).

The legal position with respect to child contact after parental separation is that parents can agree arrangements informally, there is no requirement to seek a court order. The law does not explicitly seek to influence those arrangements and there is no statutory presumption that there should be contact. Parents who cannot agree can apply to the court for a contact order under Section 8 of the Children Act 1989, which is governed by the welfare principle, ie that when determining any question with respect to a child's upbringing, the child's welfare is the court's 'paramount consideration' (section 1(1)).
Despite this legislative neutrality on the issue of contact, public policy and case law in the courts strongly promote the maintenance of children's relationships with their non-resident parent after parental separation and divorce. In 2002 the government declared its aim was:

> To enable children to benefit from the stability offered by a loving relationship with both parents, even if they separate' (LCD, 2002).

Similarly in 2004, the Green Paper '*Parental Separation: Children's needs and Parents' responsibilities',* stated that the government:

> Firmly believes that both parents should continue to have a meaningful relationship with their child after separation, as long as it is safe.' (DCA/DfES/DTI, 2004).

Both the UN Convention on the Rights of the Child, to which the UK is a signatory, and the European Convention on Human Rights, incorporated into UK law by the Human Rights Act, 1998, support the right of the child – and in the case of the latter, the rights of the parent – to have contact. In the courts decisions made in leading cases have resulted in a strong 'judge-made' assumption that contact is to be promoted wherever possible (Bailey-Harris et al, 1999). In the words of the then President of the Family Division (Butler-Sloss, 2001):

> The courts naturally start with the view that in most cases contact between the child and the non-resident parent is desirable both for the child and for the parent.

Indeed it has been acknowledged that, in their desire to secure contact for children, the courts have sometimes taken insufficient account of risks to children and parents (Advisory Board on Family Law, 1999).

Despite the pro-contact stance in both government policy and case law it is clear that a substantial number of children lose touch with their non-resident parent. The question of how many is a tricky one since estimates vary widely across the studies which have sought to measure this, from as many as 40% (Bradshaw and Millar, 1991) to less than 10% (Attwood, et al, 2003). A study carried out for the then Department for Constitutional Affairs by the Office for National Statistics (ONS), (Blackwell and Dawe, 2003) found that 15% of non-resident parents interviewed, and 29% of resident parents, said there had been no contact in the past 12 months.

A more recent study, using the same methodology – the ONS Omnibus survey – found that 12% of all the separated parents interviewed reported they were sharing care more or less equally (Peacey and Hunt, 2008). Of those who were not 35% of resident and 15% of non-resident said there had been no contact in the past year. If shared care is taken into account, and parents reporting this treated as resident parents, the proportion of resident parents reporting no contact works out at 29%. These differences in the prevalence of no contact reported by resident and non-resident parents have been found in several studies and probably largely stem from the difficulty researchers encounter in getting non-resident parents who have no contact to take part in studies (Peacey and Hunt, 2008).

A reasonable estimate of the proportion of children without contact is probably around 30%. At the other end of the spectrum some children are experiencing quite high levels of contact. Blackwell and Dawe (2003) report that 17% of non-resident fathers had some form of contact every day, with eight per cent seeing their child daily, 49% at least weekly and 69% monthly. Between a half and two-thirds had overnight stays at least once a month. Peacey and Hunt (2008) found that even excluding shared care arrangements 7% of resident parents reported their child had contact with the other parent nearly every day; 34% at least weekly and 45% at least

fortnightly. The figures reported by non-resident parents were even higher (8%; 46% and 58% respectively.

Decisions about whether there should be contact and how much are typically made informally by parents, either acting together or unilaterally. Very few (10% or less) involve the courts (Blackwell and Dawe, 2003; Peacey and Hunt, 2008), even if they are not necessarily happy with the arrangements or are experiencing problems over contact. A high proportion of the parents in one recent study (Peacey and Hunt, 2008) reported experiencing problems which had affected or disrupted contact (51% of resident and 53% of non-resident parents in families where there had been some contact since separation). Those who had had problems, as one would expect, were much more likely to have used the legal system. More surprising is the finding that they still make up a minority of all those who have experienced problems (accounting for only 30% of resident and 17% of non-resident parents with problems affecting contact).

It would seem to be a reasonable hypothesis then, that the families who do turn to the courts have unusual levels of difficulty and conflict. Certainly research shows that litigating families tend to have multiple problems (Buchanan et al, 2001). Trinder et al (2006) report that when parents in court proceedings were asked to identify which out of 14 potential problems they had experienced in the three months prior to the application being made very few selected only one or two; the average was seven. Such families are likely to present major challenges to the courts.

## Genesis of the study

The study was commissioned as the result of a commitment given by the government to Parliament in the course of the passage of the Children and Adoption Act, 2006. The aim of this legislation, as far as the contact-related provisions were concerned, was to provide courts with a greater range of powers to facilitate and enforce contact[1]. However much parliamentary time was devoted to debating proposed amendments which would introduce a statutory, rebuttable presumption of, under varying guises, minimum levels of contact, into the Children Act, 1989. At the heart of these attempts to change the law were concerns about non-resident parents who went to court for a contact order but ended up with little or no contact for insubstantial reasons.

The government strongly resisted all arguments for introducing a statutory presumption of contact, let alone any particular quantity of contact, on the grounds that a) the courts already started from the point that contact was to be promoted unless there were good reasons to the contrary and b) that a statutory presumption would undermine the fundamental basis of the Children Act, the paramountcy of the interests of the child. It was acknowledged, however, that there was little statistical data on the outcomes of court proceedings. As Baroness Ashton, for the government, put it,

> *I believe that the time has come for us to look very carefully at repudiating some of the anecdotal evidence and to consider carefully what has happened*

[1] The Bill was the result of a lengthy process of consultation and consideration beginning with the work of the Children Act Sub-Committee on the Facilitation and Enforcement of Contact, followed by the Green Paper 'Parental Separation: Children's Needs and Parents' Responsibilities and the Government's Response 'Next Steps' . A draft bill was also issued for pre-legislative scrutiny and considered by a Joint Parliamentary Committee.

> *in the court. To understand more about the process we shall research what happens when the courts start with a desire for contact and see what the final orders* are[2].

And later:

> *I recognise the concern at the heart of many of the issues, that is, those parents, often non-resident fathers, who do not get a fair deal. I repeat the commitment I gave...during the previous stage of the Bill: I intend to commission new research to establish a proper evidence base. I will go further, if the research recognises the problem that noble Lords have raised with me anecdotally, I will take action to address it. I am at one with noble Lords in recognising the critical importance of establishing the evidence base[3].*

This study was commissioned to give effect to that commitment.

## The aims of the study and what was known from previous research

The questions to be addressed by the study fell into the following broad categories: outcome; the relationship between expectations and outcome; process; and reasons. Existing research provided some clues but it was clear there were many gaps in the evidence base.

### Outcomes

The Ministry of Justice specification asked for data on: the duration, frequency and mode of contact (direct, indirect, supervised or unsupervised). A little information was available from previous research on the type of contact obtained. A file study conducted for the DCA (Smart et al, 2003) reports that while in a quarter of the cases brought by fathers there were interim orders restricting contact, only 10% ended in this way. The most common outcome was direct, unsupervised contact.

Much was made, in the House of Lords debate on the Children and Adoption Bill, of a piece of research by the National Association of Probation Officers (NAPO), which found that 5.2% of cases ended with an order for no contact; 8.2% in indirect contact only and 5.7% in supervised contact[4]. Even higher proportions are reported in another study (Buchanan et al, 2001), where 36% ended in indirect or no contact. Both these studies, however, were of cases in which a welfare report was ordered, which does not apply to the whole litigating population. Indeed one study found that such reports were ordered in 51% of cases (Perry and Rainey, 2007) while the proportion in Smart's study was even lower (41%; Smart et al, 2003).

### Expectations and outcome

Existing research indicated that applicants have about a 50:50 chance of getting the order they wanted (Bailey-Harris et al, 1998; Buchanan et al, 2001; Smart et al, 2003). However this data appeared to relate only to the broad type of contact

[2] Lords Hansard Text 14 Nov, HL col 861
[3] Lords Hansard Text 29 Nov, HL col 200
[4] Earl Howe, 14 Nov, HL Col 854

wanted (ie staying rather than visiting, unsupervised rather than supervised) rather than either the frequency or duration of contact. There was no data on how the quantum of contact ordered or agreed related to what the applicants had originally sought.

## Process

The project brief also asked for data to be collected on the process through which outcomes were reached, including: whether orders were made by agreement, the negotiation/conciliation process, CAFCASS recommendations and the involvement of CAFCASS and legal representatives in facilitating agreements.

Existing research suggested that the outcomes of most contact cases are rarely arrived at through adjudication. A court file study of residence and contact cases conducted by Bailey-Harris et al (1998) for instance, reported that only 15% of cases went to trial. Even in the highly conflicted cases in the study by Buchanan et al (2001) this proportion only rose to a third, with the rest evenly divided between those which settled at the door of the court prior to final hearing and those which settled before this point.

It is also clear that apparent agreement between the parents, reflected perhaps in a consent order, or an order of no order, is not necessarily an indicator of satisfaction. As Bailey-Harris et al (1998) point out '*the formal conclusion to...proceedings bears a somewhat variable relationship to parents' genuine acceptance of whatever outcome appears to be agreed*'. In particular they note considerable evidence of parental dissatisfaction with an outcome of no order. Buchanan et al (2001) record that levels of dissatisfaction with 'agreements' reached at the door of the court were as high as with the outcomes of a contested hearing. Withdrawn cases, (which accounted for 4% of all contact applications in 2004 (Judicial Statistics, 2005) are hard to interpret, as Smart points out (Smart et al, 2003). They may, as the researchers surmise, reflect parental agreement that there should be some contact. However in at least 10% of cases there was an agreement there should be no contact. Other withdrawals may indicate that the applicant parent has simply given up (Smart et al, 2005).

There appeared to be no published research which did what this research was designed to do, compare the detail of an initial application with the detail of the outcome and identify the process by which one is translated into the other.

## Circumstances, reasons and explanations

In addition to process, the project brief included exploring the reasons behind particular legal outcomes; the arguments and evidence advanced by the parties, the recommendations of Cafcass officers, and court judgments. As indicated earlier, a consistent theme in the House of Lords debates during the passage of the Children and Adoption Act 2006 was that courts are too ready to accept flimsy arguments put forward by resident parents for denying or reducing contact to perfectly sound non-resident parents. In contrast the evidence from existing research suggested that courts are very loath to deny any face to face contact and that where they do it is usually because they believe contact presents a serious risk to the welfare of the child or the resident parent, because of domestic violence or child sexual abuse (Smart et al., 2003).

# Methodology

## The file study

The project brief specified a sample of 300 files covering cases heard in all three tiers of court: the family proceedings court, county court and high court. (In the event 308 relevant files were examined in detail). The criteria for selection were a) that there was an application for a section 8 contact order, b) that the applicant was a parent and the child was living with the other parent, c) that the application was made in 2004. This period was selected in order to maximise the likelihood of the proceedings having ended by the time data collection started, the study by Smart et al. (2003) having indicated that only 70% concluded within a year and 13% lasted for more than two. Where more than one child was involved in a case one was selected (randomly) as the index child on whom the data to be collected would focus.

The cases were drawn from 11 courts across the country, five family proceedings courts and six county courts, distributed across all six court circuits and covering a mix of urban and more rural areas. Ten of the courts were selected, by the researchers, using information supplied by the Her Majesty's Courts Service (HMCS) statistical services, to reflect a balance between courts handling high, medium and low numbers of contact cases and the target numbers of cases per court were then determined proportionately. The ratio of county to family proceedings courts cases was intended to reflect the national picture.

As the work progressed two amendments had to be made to this methodology. First, it became evident that although three of the county courts selected had high court jurisdiction, and therefore in principle should have been expected to supply us with a reasonable number of high court cases, in fact the numbers were miniscule. Court 11 was therefore added in to boost the numbers. However since this is a large court, resources and time did not allow us to take a proportionate sample.

Second, the number of relevant cases in the family proceedings courts proved to be somewhat lower than anticipated. This was partly because contact applications were recorded per child rather than, as in the county courts, per case; partly because a proportion of cases were lost to the research when they were transferred to the county court and partly for reasons we could not ascertain. The loss of cases because they proved not to be relevant (eg because the applicant was a grandparent, or because the child was living with a non-parent relative) also had a more significant effect on the family proceedings courts sample because of the smaller numbers involved anyway. As the result of all these factors, in order to achieve our family proceedings court target sample it was usually necessary to take virtually all the relevant cases rather than the one in three we had originally anticipated. Table 1.1 sets out the distribution of the sample cases across the courts.

In the county courts, cases were selected randomly, by the statistical department of HMCS, from the detailed computerised returns routinely supplied by the courts. In the family proceedings courts it was necessary for the researchers to select the cases using manual records.

Quantifiable data was abstracted from the files using a partially pre-coded computerised proforma. This was analysed using the statistical package SPSS. The researchers also made detailed notes on the more qualitative elements of the data which have been used to provide a more in-depth understanding of the cases and to generate illustrative material.

**Table 1.1: Distribution of sample cases across the courts**

| | No | % |
|---|---|---|
| *Family Proceedings Courts* | *74* | *24* |
| Court 1 | 18 | 6 |
| Court 2 | 12 | 4 |
| Court 5 | 20 | 7 |
| Court 7 | 16 | 5 |
| Court 8 | 8 | 3 |
| | | |
| *County courts* | *234* | *76* |
| Court 3 | 64 | 21 |
| Court 4 | 57 | 19 |
| Court 6 | 28 | 9 |
| Court 9 | 34 | 11 |
| Court 10 | 32 | 10 |
| Court 11 | 19 | 6 |
| | | |
| (N=) | (308) | |

## Analysis of hearing transcripts

In the county and high courts, but not in the family proceedings courts, court hearings are routinely recorded and the tapes stored. Since these potentially offered a valuable source of data additional to that which could be obtained from court files provision was made for a sample of tapes to be obtained from the courts and professionally transcribed. In total 102 transcripts, relating to 43 cases, were obtained and examined. The transcripts requested were chosen by the researchers on a purposive rather than random basis, the criteria being their likely value in addressing the research questions. Thus we selected cases where there had been contested hearings, or the outcome differed substantially from what the non-resident parent had originally sought, or where the file data seemed incomplete and the transcript might shed light on the process.

## Interviews

Individual interviews, mostly face to face but in a few cases by telephone, were conducted with 27 solicitors, from eight of the research areas. They were selected on the basis that they, or their firms, had acted in one or more of the cases in the file sample. Group interviews, and one individual interview, were undertaken with a total of 20 Cafcass officers and three Cafcass managers. Group interviews were conducted with eight magistrates and five legal advisors, from three family proceedings courts. Nine district judges and four circuit judges from four of the county courts, were interviewed. Five of these (3 DJs and 2 circuit judges) were individual interviews, the rest group. The decision as to whether to interview singly or together was partly a matter of logistics (in one court, for instance, only one district judge regularly sat in children's cases; in others it was not feasible to get the judges together) and partly judicial choice. All the interviews were tape-recorded, with the permission of the interviewees, and subsequently transcribed.

It is important to note that none of the interviews asked about the specific cases we had examined in the file study, they sought to explore the interviewee's general

experience of contact cases and while they often illustrated their comments with case examples none of these were identified by name.

## Profile of the sample

### The children

Sixty per cent of the 308 sample cases involved a single child, typically very young (mean of 4.5 years) (Appendix table 1). A total of 472 children were subject to the proceedings with 53% of the 308 cases having at least one child under the age of five at the point the application was made and 38% having no child older than that. The average age of the index child at the start of the proceedings was 5.5 years (Appendix tables 2-4). Just over half the index children were boys (51%).

The ethnicity of the child was recorded in only 114 cases, of which the vast majority (83; 73%) were white, typically British. Seventeen children were from Asian families; 12 were dual heritage and two from other groups. There were only four courts in which the proportion of children known to be from minority ethnic groups exceeded a quarter. In most of the remaining cases the information on file tended to suggest that the child was of white British origin. It seems that only a tiny proportion of the clientele of the family courts come from minority ethnic groups.

The vast majority of children (279; 91%) lived for most or all of the time with their mothers; with 23 (7%) living with their fathers. Four children had recently temporarily changed residence (three from their mother and one from their father) and two appeared to be in a *de facto* shared living arrangement.

### The parents

The average age of the fathers in the sample was 34, but the range was enormous, from 17 to 58 (n=270, no data available on 38). Nine were under 21 at the point they brought the application. The mothers were on average slightly younger (mean 31) but again there was a fairly wide age range (18-50), with 14 being less than 21 (n=250, missing data 58).

In over half the sample cases (162 of 308; 53%) the parents had not previously been married to each other, with 116 (38% of 308) having cohabited; 6% never having lived together and 9% where it was not possible to establish, from the information on file, whether the parents had ever lived together) (Appendix table 5). Information was not always available on the interval between the parental separation and the sample proceedings but where it was in almost half (46% 116 of 255) it exceeded two years. At the other end of the spectrum just over a fifth (56; 22%) had separated very recently, ie within the previous six months. In cases coming to court for the first time over contact the proportion of the very recently separated was slightly higher (26%) but there was still a substantial proportion (35% of 188) who had separated more than two years previously (Appendix table 6).

### The cases

The data suggests that most parents who bring their contact disputes to court are doing so for the first time. In 236 of the 308 sample cases; 77% this was the first set of proceedings about contact in relation to the index child, although in one case the file data was ambiguous on this. Sixty-four had had previous completed proceedings

while in seven the sample application was part of ongoing proceedings. In most cases (42 of 62; 68%) over a year had elapsed since the end of the previous proceedings, although six (10%) had come back within six months. Only 11 cases had more than one set of previous proceedings. 'Perpetual litigants' (Buchanan et al, 2001) may absorb a disproportionate amount of court time and attention but they do appear to be a tiny minority of cases.

Applications were almost all (289; 94%) brought by the non-resident parent, typically the father (265 of 289; 92%; 86% of all applications) although there were also 24 cases brought by non-resident mothers. More than half the non-resident parent applicants (156 of 289; 54%) were also seeking other orders, typically a parental responsibility order (107; 69%), with 49 seeking sole or shared residence (31%); 23 a prohibited steps order (15%); and 15 a specific issue order (10%). Thirty non-resident parents (10%) had brought proceedings, at least in part, to give effect to orders or agreements made in previous proceedings, of whom 10 were asking for a penal notice.

A strikingly high proportion of cases (167 of 308; 54%) involved allegations or concerns raised by the resident parent about what we have categorised as 'serious welfare issues' ie: domestic violence (34%); child abuse or neglect (23%); drug abuse (20%); alcohol abuse (21%); mental illness (13%); parenting capacity affected by learning disability (1%) or fear of abduction (15%), including removal from the UK. (8%), (table 1.2).

In addition, in a further 27 cases, there had been welfare concerns in the past, although they were not being raised as an impediment to contact in the sample proceedings, while in 41 cases there were past welfare concerns in addition to those being raised in the sample proceedings. Thus there were only 114 cases (37% of 308) in which there were no serious welfare concerns. By far the most common issue was domestic violence. In total in exactly half the sample cases (154 cases of 308) allegations of domestic violence perpetrated by the non-resident parent had been made at some point.

**Table 1.2: Allegations and concerns* raised by the resident parent**

| | Issue in case | | Background only | |
|---|---|---|---|---|
| | No. | % | No. | % |
| Domestic violence | 105 | 34 | 49 | 16 |
| Child protection issue | 72 | 23 | 7 | 2 |
| Drug abuse | 62 | 20 | 8 | 3 |
| Alcohol abuse | 64 | 21 | 7 | 2 |
| Mental health | 39 | 13 | 8 | 3 |
| Learning disability | 3 | 1 | 2 | 1 |
| Abduction | 46 | 15 | 4 | 1 |
| *Any of these* | *167* | *54* | *68* | *22* |
| | | | | |
| Multiple concerns | *114* | *37* | | |
| Maximum | *6* | | | |
| Mean number of concerns | *1.3* | | | |

N=308. *Since more than one concern could be raised the percentages sum to more than 100

In most cases there was no contact between the child and the non-resident parent at the point the application was brought (72%; 211 of the 294 where information was available). However most of them (172 of 211; 82%) were known to have had

contact at some point since separation. Just over half of all non-resident parents (164; 57% of the 289 where data was available) had seen the child within the past three months although in a quarter of cases (78; 27%) the interval exceeded six.

At the start of the case at least 35% of resident parents (109 of 308) were known to have been opposed to any face to face contact, with a further 14% (44) wanting supervised contact and 10% (31) only resisting staying contact. In a third of cases (101 of 308; 33%) the issues appeared to be narrower while in 22 no information was available. In a quarter of cases (77), the index child was reported to be refusing direct contact, with one further child opposing only staying contact. In eight other cases a sibling was opposing contact.

There was a very high level of legal representation with 91% of all applicants (n=307) and 87% of respondents (n=304) known to have been represented at some point in the proceedings, although in some instances they were not represented throughout (at least 8% of applicants and 12% of respondents). Just over two-thirds of represented parties (68% of applicants; 189 of 280; 69% of respondents, 182 of 264) were legally aided, although not necessarily throughout the case. Overall 52% of applicants (161 of 308) and 59% of respondents (182 of 308) were both legally represented at some point and legally aided.

## Structure of the report

Quantifiable data from the files provides the core of the report. This is supplemented with illustrative case examples from the case records, material from the hearing transcripts and interviews with the judiciary, Cafcass officers and lawyers. Chapters 2 to 8 provide a detailed examination of the sample cases, interwoven, as appropriate, with data from the interviews. Chapter 2 documents the outcomes of the court proceedings in the completed sample cases in terms of the legal outcome (ie contact order, no order; dismissal; withdrawal) and the type and amount of contact which the court would have expected to take place as a result. Chapter 3 compares those outcomes with what the non-resident parent was seeking at the point s/he brought the proceedings and the initial position of the resident parent, in so far as it was possible to do this given the available data. Chapters 4-7 then examine each of the various outcomes in turn viz: no contact, indirect contact only, visiting and staying contact, exploring how those outcomes were reached and, where the non-resident parent did not obtain either the form or the amount of contact originally sought, or where the outcome was contrary to the position of the resident parent, how and why this outcome was reached. Chapter 8 looks at the 10 cases which had not completed at the point data collection had to cease. Chapters 9, 10 and 11 focus more on the interview material though cross-referencing this with our findings from the analysis of the sample cases. Chapter 9 examines key aspects of the court process and chapter 10 the extent to which the courts can be said to operate on a de facto presumption of contact and the obstacles to delivering that in practice. Chapter 11 looks more broadly at possible changes which might make the courts more effective. Chapter 12 summarises the research findings and considers their implications for policy.

# Chapter 2: Legal endings and the contact the court would have expected to take place as a result.

## Legal endings

Our findings on the *legal* outcomes of the sample cases are based on 292 of the 308 cases. Ten cases had not reached completion at the end of the data collection period and a further six had to be excluded because either the contact parent had died or the parents had reconciled.

The majority of completed cases (70%; 203 of 292) ended with a contact order (table 2.1). The next most common disposal was withdrawal (46; 16%), with 7% of cases ending in an order of no order and 7% being dismissed. In three cases the contact application seems to have disappeared from the court's view as other issues (such as residence) took precedence and no outcome was recorded.

### Table 2.1: Legal endings by court level

| | All courts | | FPC | | Higher courts | |
|---|---|---|---|---|---|---|
| | No | % | No. | % | No. | % |
| Contact order made | 203 | 70 | 55 | 76 | 148 | 67 |
| Case dismissed | 19 | 7 | 8 | 11 | 11 | 5 |
| Withdrawn | 46 | 16 | 8 | 11 | 38 | 17 |
| Order of no order | 21 | 7 | 1 | 1 | 20 | 9 |
| No order made | 3 | 1 | 0 | 0 | 3 | 1 |
| | | | | | | |
| (N=) | (292) | | (72) | | (220) | |

There was considerable variation between the courts in the proportion of cases ending with a contact order, ranging from 47% to 90%. Typically, however the differences were accounted for by variation in the proportion of withdrawn cases (from none to 36%). There were only two courts in which more than 10% of cases were dismissed, with 13% and 22% respectively) while in three not a single case resulted in dismissal.

Cases remaining in the family proceedings courts were more likely than those in the higher courts to end with either a contact order (76% compared to 67%) or dismissal (11% compared with 5%), with the higher courts having more cases being withdrawn (17% compared with 11%) or having an order of no order (9% compared with 1%). These differences were statistically significant ($p<.05$).

### Table 2.2: Legal endings and parental agreement

| | Outcome agreed | | Outcome not agreed | | |
|---|---|---|---|---|---|
| | No | % | No. | % | (N=) |
| Contact order made | 173 | 85 | 30 | 15 | (203) |
| Case dismissed | 0 | 0 | 19 | 100 | (19) |
| Withdrawn | 25 | 57 | 19 | 43 | (44) |
| Order of no order | 15 | 71 | 6 | 29 | (21) |
| *All legal endings* | *213* | *74* | *74* | *26* | *(288)* |

As can be seen from table 2.2, most outcomes were reached by agreement. At least 85% of contact orders (173 of 203) were known to be by consent and it is possible that some of the remaining 30 may have been. An order of no order also mainly reflected agreement (15 of 21) as did just over half the withdrawn cases. Not surprisingly, none of the dismissed cases did.

In each of the sample courts well over than half the cases ended by agreement, the lowest proportion being 60% and the highest 87%. In six courts more than 75% of cases ended in agreement. Cases in the lower courts were more likely to end by agreement than those completing in the higher courts (79% of 72 compared with 72% of 218) but the difference was small and not statistically significant.

## The relationship between legal endings and the contact the court would have expected to take place as a result

The way in which the court disposed of a case does not tell us very much about what this meant in terms of contact. If an order of no order is made, for example, or an application is withdrawn, the effect will be that the status quo can continue. In some cases this would mean that contact, perhaps even staying contact, would continue; in others that there would be no contact at all. In the next section, therefore, we look at outcomes in terms of the contact that the court would have expected to take place as the result of the legal disposal. Clearly in most cases we have no way of knowing whether that contact *did* actually take place. Thus the term 'contact outcome' should always be understood in the limited sense of the contact that the *court* would have *expected* to take place after the proceedings had concluded, and the term 'expected contact' means expected by the court.

**Table 2.3: Legal endings and expected contact outcomes**

| | Legal ending | | | | | |
|---|---|---|---|---|---|---|
| | Order | Dismissed | Withdrawn | No order* | All | |
| *Contact court expected to take place* | % | % | % | % | No. | % |
| **Face to face contact** | **92** | **0** | **56** | **72** | **225** | **79** |
| Staying | 60 | 0 | 21 | 38 | 139 | 49 |
| Unsupervised visiting | 25 | 0 | 7 | 19 | 58 | 20 |
| Type unknown | 3 | 0 | 19 | 10 | 15 | 5 |
| As/if child wanted | <1 | 0 | 2 | 0 | 2 | <1 |
| Supervised visiting | 3 | 0 | 7 | 5 | 11 | 4 |
| | | | | | | |
| **No face to face contact** | **8** | **100** | **44** | **29** | **61** | **21** |
| Indirect contact | 8 | 0 | 12 | 0 | 21 | 7 |
| No contact | <1 | 100 | 30 | 29 | 39 | 14 |
| Unclear indirect/no contact | 0 | 0 | 2 | 0 | 1 | <1 |
| | | | | | | |
| (N=) | (203) | (19) | (43) | (21) | 286 | 100 |

N**=** 286. Includes cases which ended with an order of no order and those where no order was made. Excludes six cases where it was not known whether there was to be any contact

Typically (186; 92% of 203) contact orders provided for face to face contact, with all but one of the remainder (16, 8%) being for indirect contact (table 2.3). There was only one *order* prohibiting any contact. Similarly an order of no order usually meant

that face to face contact had been agreed (71%, 15 of 21), although in six cases it was not expected that there would be any contact at all. In contrast in all the 19 cases where applications were dismissed the effect was that the resident parent was not required to allow any form of contact.

Withdrawn cases were more mixed. In just over half (24 of 43; 56%) the application was withdrawn following a parental agreement that there would be face to face contact. In the remainder, however, the applicant had settled either for indirect contact (5; 12%) or acknowledged there was to be no contact (13; 30%)[5]. This finding is particularly important in helping to interpret national statistics since the number of cases ending in no face to face contact as the result of a withdrawn application (19) was exactly the same as those where there was to be no contact because the court had dismissed the application.

Overall, as can be seen from the final column in table 2.3, in the vast majority of cases the court would have expected face to face contact to take place as the result of the legal disposal (225 of 286; 79%). Indeed in almost half the cases (139 of 286, 49%) it was expected that there would be staying contact and in a further fifth (58; 20%) unsupervised visiting contact. In 15 cases, while it was clear there was to be face to face contact, the type of contact was not specified, and in two cases the type of contact was to be determined by the child.

Supervised contact was extremely unusual as a final outcome (11; 4%); although, as we shall see in subsequent chapters, such contact was a common strategy on an interim basis.

Of the 61 cases (21% of 286) where face to face contact was not provided for in 21 there was only to be indirect contact (7% of all cases) in 39 no contact at all (14%) and in one case it was not clear.

## Variation by court and court level

Table 2.4 sets out the lowest proportion of cases ending in a particular outcome in any court and then the highest proportion. As can be seen there was considerable variation. The proportions of cases in which the expected outcome was staying contact, for instance, ranged from 28% to 73% and unsupervised visiting contact from 7% to 33%. Perhaps the most striking point, however, is that the proportions ending in no contact or indirect contact only were low, with some courts having no cases at all ending in these outcomes and none exceeding just over a fifth.

[5] In addition there was one case where it was not clear whether there was at least to be indirect contact.

**Table 2.4: Variation in contact outcomes by court**

| | Lowest % in any court | | Highest % in any court | |
|---|---|---|---|---|
| Contact court expected to take place | % | (N=) | % | (N=) |
| *Face to face contact* | *67* | *(18)* | *100* | *(15)* |
| Staying | 28 | (18) | 73 | (30) |
| Unsupervised visiting | 7 | (14) | 33 | (30) |
| Type unknown | 0 | (8-30) | 18 | (11) |
| As/if child wanted | 0 | (8-63) | 5 | (20) |
| Supervised visiting | 0 | (14-30) | 13 | (8) |
| | | | | |
| *No face to face contact* | *0* | *0* | | |
| Indirect contact | 0 | (11) | 21 | (14) |
| No contact | 0 | (15) | 22 | (18) |
| Unclear indirect/no contact | 0 | (8-63) | 2 | (51) |

N=286

Overall an outcome of face to face contact was more common in the family proceedings courts than in the higher courts (table 2.5) although the difference was not statistically significant. Differences were also apparent between courts at the same level (tables 2.6a and b) and while the difference between the courts with the highest and lowest proportion of particular outcomes did reach statistical significance in the family proceedings courts and almost did so in the higher courts ($p<.05$) the small numbers involved mean this finding has to be regarded with extreme caution.

**Table 2.5: Contact outcomes by court level**

| | FPC | | Higher courts | |
|---|---|---|---|---|
| *Contact court expected to take place* | No | % | No. | % |
| Face to face contact | 60 | 83 | 165 | 77 |
| Indirect contact | 3 | 4 | 19 | 9 |
| No contact | 9 | 13 | 29 | 14 |
| No face to face contact, unclear if indirect | 0 | 0 | 1 | <1 |
| | | | | |
| N= | (72) | | (214) | |

N=286

**Table 2.6a: Contact outcomes by court (family proceedings courts)**

| | Court | | | | |
|---|---|---|---|---|---|
| *Contact court expected to take place* | 1 | 2 | 5 | 7 | 8 |
| | % | % | % | % | % |
| Face to face contact | 67 | 82 | 90 | 100 | 75 |
| Indirect contact | 11 | 0 | 0 | 0 | 13 |
| No contact | 22 | 18 | 10 | 0 | 13 |
| | | | | | |
| (N=) | (18) | (11) | (20) | (15) | (8) |

N=72

**Table 2.6b: Contact outcomes by court (higher courts)**

| | Court | | | | | |
|---|---|---|---|---|---|---|
| *Contact court expected to take place* | 3 | 4 | 6 | 9 | 10 | 11 |
| | % | % | % | % | % | % |
| Face to face contact | 77 | 69 | 88 | 87 | 80 | 64 |
| Indirect contact | 8 | 10 | 8 | 7 | 7 | 21 |
| No contact | 16 | 20 | 4 | 7 | 13 | 14 |
| No face to face contact, unclear if indirect | 0 | 2 | 0 | 0 | 0 | 0 |
| | | | | | | |
| (N=) | (64) | (51) | (25) | (30) | (30) | (14) |

N=214

Where face to face contact was permitted, cases ending in the higher courts were more likely than those concluding in the family proceedings courts to include overnight stays (106 of 152; 70%, compared with 33 of 55; 60%). However this difference was not statistically significant.

In the next section we look at whether differences in case mix might help to account for these differences.

## Factors associated with contact outcomes

### Serious welfare issues

**Table 2.7: Contact outcomes by prevalence of serious welfare allegations or concerns**

| | Type of contact court expected to take place | | | | |
|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect | None |
| *Welfare issues* | % | % | % | % | % |
| Domestic violence | 24 | 26 | 46 | 48 | 69 |
| Child protection issue | 17 | 17 | 35 | 48 | 33 |
| Drug abuse | 18 | 12 | 36 | 24 | 41 |
| Alcohol abuse | 17 | 14 | 27 | 29 | 36 |
| Mental health | 12 | 9 | 18 | 19 | 13 |
| Learning disability | <1 | 0 | 9 | 0 | 0 |
| Abduction | 10 | 17 | 9 | 5 | 18 |
| ***Any of these*** | ***42*** | ***47*** | ***73*** | ***81*** | ***85*** |
| | | | | | |
| Multiple concerns | *27* | *29* | *55* | *52* | *62* |
| Minimum | *0* | *0* | *0* | *0* | *0* |
| Maximum | *6* | *5* | *4* | *5* | *5* |
| Mean number of concerns | *1.0* | *0.9* | *1.8* | *1.7* | *2.1* |
| | | | | | |
| *(N=)* | *(139)* | *(58)* | *(11)* | *(21)* | *(39)* |

N= 268. Cases in which the expected outcome was not precisely specified are excluded

The most obvious factor which differentiated case outcomes was the prevalence of what we have categorised as 'serious welfare issues', which includes allegations or concerns about domestic violence, child abuse or neglect, parenting deficiencies linked to drug or alcohol abuse, mental illness or learning disability, and fear of abduction. Analysis showed that there was a statistically significant association between the contact outcome and the proportion of cases raising such concerns (p=.000). Thus, as table 2.7 shows, while just over two in five cases ending in staying contact involved such issues, among those ending with no face to face contact it was more than four in five.

As table 2.8 shows, where serious welfare concerns were not raised 90% of cases (112 of 125) ended with staying (65%) or unsupervised visiting contact (25%). Other outcomes were rare, with only 5% ending with no contact at all.

What this table also demonstrates, however, is that while such concerns are clearly highly relevant to the outcome, the mere raising of concerns is not determinative. Of the 143 completed cases in which at least one serious welfare concern was raised 60% ended with staying or unsupervised visiting contact. There was no single concern in which the proportion of cases ending in unsupervised contact fell to less than half, nor did multiple concerns tip the balance. If, as it is sometimes claimed, resident parents play the welfare card in order to resist contact, their strike rate is rather low.

**Table 2.8: Serious welfare allegations or concerns by contact outcomes**

| | Type of contact court expected to take place | | | | | |
|---|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect | None | |
| | % | % | % | % | % | (N=) |
| Domestic violence | 37 | 17 | 6 | 11 | 30 | (90) |
| Child protection issue | 38 | 17 | 7 | 17 | 22 | (60) |
| Drug abuse | 44 | 12 | 7 | 9 | 28 | (57) |
| Alcohol abuse | 44 | 15 | 6 | 11 | 26 | (55) |
| Mental health | 52 | 15 | 6 | 12 | 15 | (33) |
| Learning disability | 50 | 0 | 50 | 0 | 0 | (2) |
| Abduction | 42 | 30 | 3 | 3 | 21 | (33) |
| ***Any of these*** | ***41*** | ***19*** | ***6*** | ***12*** | ***25*** | ***(143)*** |
| ***None of these*** | ***65*** | ***25*** | ***2*** | ***3*** | ***5*** | ***(125)*** |
| Multiple concerns | *39* | *18* | *6* | *12* | *25* | *(95)* |

N= 268. Cases in which the expected outcome was not precisely specified are excluded

## Face to face contact at the point the application was made

There was also a close and statistically significant association (p=.000) between the outcome and whether a) any contact was taking place at the time the application was made and b) when the child last saw the non-resident parent (table 2.9). In almost half the cases which ended up with staying contact (62 of 134; 46%) there was some contact at the time of the application compared to only 8% of those where the outcome was no contact (3 of 39) and none of those where the outcome was indirect contact only. Similarly three-quarters of children in cases where there was to be staying contact (99 of 131) had seen the contact parent within the three months prior to the application (compared to only a fifth of those with only indirect contact) and the gap extended beyond six months in only 14% (compared to two thirds of those with indirect contact).

**Table 2.9: Contact outcomes by contact at time of application**

| | Type of contact court expected to take place | | | | |
|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect | None |
| | % | % | % | % | % |
| Face to face contact occurring | 46 | 21 | 30 | 0 | 8 |
| (N=) | (134) | (57) | (10) | (21) | (39) |
| | | | | | |
| *Child last seen* | | | | | |
| Within three months | 76 | 44 | 63 | 19 | 24 |
| 4-6 months ago | 11 | 26 | 13 | 14 | 27 |
| >6 months ago | 14 | 31 | 25 | 67 | 50 |
| | | | | | |
| (N=) | (131) | (55) | (8) | (21) | (34) |

Table excludes cases in which the precise outcome was not known or in which residence changed.

Again it is important to point out that although the contact position prior to proceedings was clearly very important, it was not determinative. If we look at the data the other way round (table 2.10) it can be seen that where face to face contact was taking place at the point the application was made most cases ended in staying contact (78%; 62 of 80) and only a handful (3; 4%) ended with no contact at all. In the majority of cases, however, there was no face to face at the outset. These cases were more likely to end in either indirect contact (21 of 181; 12%) or no contact at all (26; 20%). However 65% (117 of 181) ended with either staying or visiting contact.

**Table 2.10: Contact at time of application by contact expected to take place as the result of proceedings**

| | Type of contact court expected to take place | | | | | | |
|---|---|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect | None | All | |
| | % | % | % | % | % | No. | % |
| Face to face contact occurring | 78 | 15 | 4 | 0 | 4 | 80 | 100 |
| No face to face contact | 40 | 25 | 4 | 12 | 20 | 181 | 100 |
| | | | | | | | |
| *Child last seen* | | | | | | | |
| Within three months | 71 | 17 | 4 | 3 | 6 | 140 | 100 |
| 4-6 months ago | 34 | 34 | 2 | 7 | 22 | 41 | 100 |
| >6 months ago | 27 | 25 | 3 | 21 | 25 | 68 | 100 |

Table excludes cases in which the precise outcome was not known or in which residence changed.

Similarly, the longer the gap since the child had been seen the less likely the case was to end in face to face contact (table 2.10). Where the interval was no more than three months 91% of cases (128 of 140) finished with an expectation of face to face contact. By the six month point this had dropped to 71% (29 of 41) and where the period exceeded six months to only 54%. The proportions ending in staying contact similarly fell away. Nonetheless over half of the non-resident parents who had not seen their child for more than six months did get direct contact restored and 27%

ended up with staying contact. The court process, it would seem, can get contact going again even in inauspicious circumstances.

### The initial position of the resident parent

The position of the resident parent at the outset was also a significant factor associated with the outcome (p=.000, table 2.11). In three-quarters of the cases ending with no face to face contact, for instance, the resident parent had opposed any contact, compared to only 22% of those ending with staying contact.

### Table 2.11: Contact outcomes by initial position of resident parent

| | Type of contact court expected to take place | | | | |
|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect | None |
| | % | % | % | % | % |
| Opposed face to face contact | 22 | 36 | 10 | 76 | 69 |
| Opposed unsupervised contact | 13 | 17 | 60 | 10 | 8 |
| Opposed staying contact | 14 | 16 | 10 | 0 | 0 |
| None of these/not known | 51 | 31 | 20 | 14 | 23 |
| | | | | | |
| (N=) | (138) | (58) | (10) | (21) | (39) |

N=266. Excludes cases in which the precise outcome was not known or in which residence changed.

Again, however, opposition does not guarantee success (table 2.12). Of the 95 cases in which the resident parent was originally opposing contact and the outcome was known, more than half (52; 55%) ended in direct contact, and 32% in staying contact. In all, 61% of resident parents (99 of 163) who were opposing either staying or unsupervised contact or resisting any contact at all failed to achieve their objectives.

### Table 2.12: Initial position of resident parent by contact outcome

| | Type of contact court expected to take place | | | | | | |
|---|---|---|---|---|---|---|---|
| Initial position of resident parent | Staying | Unsupervised visiting | Supervised visiting | Indirect | None | All | |
| | % | % | % | % | % | No. | % |
| Opposed any contact | 32 | 22 | 1 | 17 | 28 | 95 | 100 |
| Opposed unsupervised | 46 | 26 | 15 | 5 | 8 | 39 | 100 |
| Opposed staying | 66 | 31 | 3 | 0 | 0 | 29 | 100 |
| None of these | 71 | 18 | 2 | 3 | 9 | 103 | 100 |

N=266. Excludes cases in which the precise outcome was not known or in which residence changed.

### Age of index child at the end of the proceedings

Some differences were evident in the age profile of the various outcome groups. Children who ended up with supervised contact tended to be very young, with a

mean age of just under four years, compared to almost six for those with unsupervised visiting and over six for those with staying contact (table 2.13).

The most notable feature, however, was the sharp falling off in direct contact among the small number of older children, with eight of the 13 aged 13 and above having no contact or only indirect contact (table 2.14). This was clearly related to the greater likelihood that where older children were expressing opposition to contact their wishes would be heeded. All children aged 13 and above in this position ended up with either no face to face contact or contact if they wished it, compared to only 15 of the 29 children aged between five and nine. The significance of the views of older children in the outcome of proceedings was a theme which emerged very clearly from our interview data.

**Table 2.13: Contact outcome by age of index child at end of proceedings**

| | Type of contact court expected to take place | | | | |
|---|---|---|---|---|---|
| Age of child (years) | Staying | Unsupervised visiting | Supervised visiting | Indirect | No contact |
| | % | % | % | % | % |
| Under 3 | 13 | 23 | 55 | 5 | 15 |
| 3-4 | 19 | 19 | 18 | 10 | 26 |
| 5-9 | 50 | 37 | 9 | 33 | 28 |
| 10-12 | 15 | 19 | 18 | 33 | 21 |
| 13+ | 3 | 2 | 0 | 19 | 10 |
| Mean | 6.4 | 5.7 | 3.9 | 9.1 | 6.8 |
| | | | | | |
| (N=) | (139) | (57) | (11) | (21) | (39) |

*N= 267. Excludes cases in which the precise outcome was not known.

**Table 2.14: Age of index child at end of proceedings by contact outcome**

| | Type of contact court expected to take place | | | | | |
|---|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect | None | (N=) |
| | % | % | % | % | % | |
| Less than 3 | 41 | 30 | 14 | 2 | 14 | (44) |
| 3-4 years | 52 | 21 | 4 | 4 | 19 | (52) |
| 5-9 years | 63 | 19 | 1 | 6 | 10 | (109) |
| 10-12 years | 43 | 22 | 4 | 14 | 16 | (49) |
| 13+ | 31 | 8 | 0 | 31 | 31 | (13) |

N= 267. Excludes cases in which the precise outcome was not known.

## Previous marital status of parents

Somewhat surprisingly, there was no association between whether the non-resident parent got face to face contact and whether the parents had previously been married, nor even between whether they had ever lived together. Those who had been previously married, however, were more likely than those who had not to get staying rather than visiting contact (57% compared to 47%) and less likely to get supervised contact (2% compared to 6%).

### *Key factors and variation between the courts*

In principle the associations between these different factors and contact outcomes might go some way towards explaining the variation in outcomes in the sample courts in that their caseload profile might differ. (As noted earlier more cases ended in face to face contact in the family proceedings courts than in the higher courts). Analysis does not, however, indicate any straightforward link. Thus the higher courts tended to have more cases with:

- Older children (6.6 years on average compared to 6 in the FPC, with more children aged 10 or more);
- Serious welfare concerns (56% compared with 44%).
- A resident parent who was initially opposing either the principle of contact or unsupervised contact (49% compared with 46%).

On the other hand, they also had:

- Fewer cases where there was no contact at the point the application was made (67% compared to 75%)
- Fewer cases where the child had not seen the non-resident parent for more than six months (25% compared with 33%)

It was also noted earlier that where face to face contact was allowed staying contact was more likely in cases ending in the higher courts. This may be at least partially explained by the much higher proportion of cases in the higher courts where the parents had been previously married (55% compared with 22%, a statistically significant difference).

In subsequent chapters we look more closely at possible explanations for the different contact outcomes, the processes whereby they were reached and the extent to which the initial expectations of applicants were met. For the remainder of this chapter we examine each of the outcomes in detail.

## The frequency and duration of contact

In this section we examine the data on the quantum of contact awarded in each outcome group. It is important to note, however, that while orders and agreements might specify a particular frequency and duration of contact this was almost always accompanied by a provision for ‘additional contact as agreed’. The data presented here, therefore, should be understood as generally relating to minimum not maximum expected contact levels.

The data on *frequency* and *duration* will be presented separately and then an attempt will be made to amalgamate these figures to give an overall picture. We decided to adopt this method in order to give information on the maximum number of cases since data on both measures was not always available.

## Staying contact

### *Frequency*

As noted earlier, 139 of the sample cases ended with staying contact. In nine of these no details were recorded about the frequency with which such contact was expected to take place; in seven, typically because the contact parent lived some distance away, often abroad, staying contact was limited to holidays, and in one the frequency of contact was left for the child to determine. Our analysis of frequency is therefore based on 122 cases.

In calculating frequency we have taken each stay as one period of contact irrespective of duration so that, for example, children who stayed every other Saturday night and those who stayed from Friday to Sunday every other weekend are each counted as seeing their contact parent fortnightly.

As table 2.15 shows, by far the most common pattern was for staying contact to take place on a fortnightly basis (69; 57%). Only 11% of arrangements were for less frequent staying while almost a third (32%) involved more. This finding very much chimes with our interview data in which fortnightly contact was seen as the 'norm' but more frequent contact was quite common.

While courts varied considerably in the proportion of cases ending with the highest frequencies of contact (two courts did not have a single case ending with staying contact more frequently than fortnightly, while two others had more than half), the norm across all the courts was for contact on at least a fortnightly basis, with no court having less than two-thirds of cases ending in this way and eight having more than 80%. From this it can be clearly seen that where staying contact is agreed or ordered, in most circumstances the expectation is for it to take place at least every two weeks, typically, of course, alternate weekends. There was a statistically significant difference between different levels of court, however, with more than twice the proportion of cases in the higher courts ending with staying contact more frequently than once a fortnight (39% compared to 16%; $p<.05$).

### Table 2.15: Frequency of staying contact

| | All courts | | FPC | | Higher courts | |
|---|---|---|---|---|---|---|
| Frequency | No | % | No | % | No | % |
| | | | | | | |
| More than weekly | 6 | 5 | 0 | 0 | 6 | 7 |
| weekly | 32 | 26 | 5 | 16 | 27 | 30 |
| *At least weekly* | *38* | *30* | *5* | *16* | *33* | *37* |
| Every 1-2 weeks | 2 | 2 | 0 | 0 | 2 | 2 |
| Fortnightly | 69 | 57 | 24 | 75 | 45 | 50 |
| *At least fortnightly* | *109* | *89* | *29* | *91* | *80* | *89* |
| Every 2-4 weeks | 5 | 4 | 2 | 6 | 3 | 3 |
| Monthly | 8 | 7 | 1 | 3 | 7 | 8 |
| (N=) | (122) | 100 | (32) | 100 | (90) | 100 |

### *Number of overnights*

In 114 cases data was available on the maximum number of overnights the child was expected to stay on any single occasion, excluding any periods of holiday contact (table 2.16). This shows that stays of more than two nights were relatively uncommon, applying to only 12% of cases (13 involving 3 nights and one, which was

essentially a shared care arrangement, 6). The remainder of the cases were almost equally divided between one and two night stays (45% and 43% respectively). Across the courts the proportion involving two or more nights' stay on a single occasion varied from 27% to 79%, with cases ending in the higher courts being much more likely to result in contact for two or more overnights (statistically significant at p<.05).

**Table 2.16: Maximum number of overnights excluding holiday contact**

| Number of overnights | On any occasion | | Per fortnight | |
|---|---|---|---|---|
| | No | % | No | % |
| <one | 0 | 0 | 6 | 5 |
| One | 51 | 45 | 28 | 25 |
| Between 1 & 2 | 0 | 0 | 2 | 2 |
| Two | 49 | 43 | 49 | 43 |
| Three | 13 | 11 | 11 | 10 |
| Four | 0 | 0 | 9 | 8 |
| Five | 0 | 0 | 4 | 4 |
| Six | 1 | 1 | 5 | 4 |
| *Two or more nights* | *63* | *55* | *78* | *68* |
| | | | | |
| (N=) | (114) | | (114) | |

Combining the data on frequency and number of overnights (table 2.16) shows that the most common amount of staying contact was two overnights per fortnight (49; 43%). However a third of cases (36; 32%), provided for less than this and a quarter (29; 25%) more.

Cases ending in the higher courts were significantly more likely to result in higher levels of staying contact, with only 29% of cases resulting in less than two overnights a fortnight (compared to 45% in the family proceedings courts) and 33% resulting in more than two (compared to 3%) (p<.01).

### *Visiting contact in addition to staying contact*

**Table 2.17: Number of expected contact days per fortnight***

| | During staying contact | | Additional visiting | | Total days | |
|---|---|---|---|---|---|---|
| Number of days | No | % | No | % | No | % |
| <1 | 1 | 1 | 2 | 4 | 0 | 0 |
| 1 | 9 | 8 | 15 | 33 | 6 | 5 |
| 2 | 29 | 21 | 21 | 46 | 17 | 15 |
| 3 | 28 | 25 | 4 | 9 | 22 | 20 |
| 4 | 19 | 17 | 4 | 9 | 25 | 22 |
| 5 | 5 | 4 | 0 | 0 | 9 | 8 |
| 6 | 14 | 13 | 0 | 0 | 19 | 17 |
| 7 | 2 | 2 | 0 | 0 | 3 | 3 |
| 8 | 3 | 3 | 0 | 0 | 6 | 5 |
| 10 | 0 | 0 | 0 | 0 | 2 | 2 |
| 12 | 2 | 2 | 0 | 0 | 2 | 2 |
| | | | | | | |
| (N=) | (112) | | (46) | | (111) | |

*where the number of contact days per fortnight was not a whole number the fractions have been *reduced* to the nearest whole number. This means that the actual number of contact days will be slightly under-represented.

In addition to staying contact, 35% of cases (48 of 139) also provided for regular visiting contact. On average this provided for contact on just under an additional two days per fortnight (1.9), with 63% of cases (29 of the 46 on which data was available) enjoying at least that much (to a maximum of 4 additional occasions); 33% (15) having at least one additional contact and only two (4%) having less than this).

When the data for staying and visiting contact are combined (table 2.17) they show that on average children were expected to see their non-resident parent on just over four days per fortnight (4.3), though the range was large, from one to 12. Thus while 59% of children (66 of the 111 on which detailed data was available) had contact on four or more days and 29% (32) on six or more days, at the other end of the spectrum 5% (6) (were limited to one day a fortnight; 15% (17) to two and 20% (22) to three.

### *Duration of contact time*

How does this all translate into the amount of time the children were expected to be spending with their contact parent?

On average, *over the periods of staying contact alone* children were expected to spend an average of 51 hours every two weeks. The range, however, was huge, from 14 hours to 137. More than two thirds of children were expected to spend between 25 and 72 hours, with only 15% having more than this time and 17% less (table 2.18).

Visiting time in additional to staying contact added, on average, just under eight more hours (7.7), ranging from less than one hour a fortnight to 24. When this data is added in the overall figures for hours of expected contact time per fortnight in cases where staying contact was ordered or agreed rise to an average of 55 hours per fortnight (ranging from 14 to 137). Less than 10% of children were to have no more than 24 hours per fortnight, with 76% having between 25 and 72 hours and 18% more than this.

**Table 2.18: Hours expected contact time per fortnight**

| | During staying contact | | With additional visiting | |
|---|---|---|---|---|
| Number of hours | No | % | No | % |
| 24 hours or less | 16 | 17 | 7 | 8 |
| 25-48 hours | 37 | 38 | 37 | 40 |
| 49-72 hours | 29 | 30 | 33 | 36 |
| 73-96 hours | 5 | 5 | 6 | 7 |
| 97-120 hours | 6 | 6 | 6 | 7 |
| More than 120 hours | 4 | 4 | 4 | 4 |
| *Mean hours* | *51* | | *55* | |
| | | | | |
| (N=) | (97) | | (93) | |

Cases ending in the family proceedings courts tended to result in fewer hours *staying contact* (a mean of 47 hours compared to 56) but the difference in *total hours* was very slight (53 compared to 55) (tables 2.19 and 2.20).

### Table 2.19: Staying contact hours by court/court level

| | Hours per fortnight | | | |
|---|---|---|---|---|
| Court | Mean | Minimum | Maximum | (N=) |
| **FPC** | | | | |
| Court 1 | 70 | 24 | 102 | (4) |
| Court 2 | 32 | 16 | 49 | (2) |
| Court 5 | 44 | 30 | 65 | (10) |
| Court 7 | 39 | 23 | 52 | (5) |
| Court 8 | 47 | 32 | 58 | (3) |
| *All FPC's* | *47* | *16* | *102* | *(24)* |
| | | | | |
| **Higher courts** | | | | |
| Court 3 | 52 | 16 | 137 | (22) |
| Court 4 | 50 | 16 | 89 | (10 |
| Court 6 | 55 | 28 | 100 | (11) |
| Court 9 | 47 | 14 | 106 | (16) |
| Court 10 | 63 | 18 | 130 | (11) |
| Court 11 | 45 | 32 | 53 | (3) |
| *All higher courts* | *53* | *14* | *137* | *(73)* |

N= 97

### Table 2.20: Total contact hours by court/court level

| | Hours per fortnight | | | |
|---|---|---|---|---|
| Court | Mean | Minimum | Maximum | (N=) |
| **FPC** | | | | |
| Court 1 | 76 | 41 | 109 | (4) |
| Court 2 | 49 | 49 | 49 | (1) |
| Court 5 | 48 | 31 | 65 | (9) |
| Court 7 | 44 | 23 | 62 | (5) |
| Court 8 | 55 | 32 | 74 | (3) |
| *All FPC's* | *53* | *23* | *109* | (22) |
| | | | | |
| **Higher courts** | | | | |
| Court 3 | 56 | 20 | 137 | (20) |
| Court 4 | 54 | 25 | 89 | (10) |
| Court 6 | 59 | 33 | 100 | (11) |
| Court 9 | 49 | 14 | 111 | (16) |
| Court 10 | 63 | 18 | 130 | (11) |
| Court 11 | 45 | 32 | 53 | (3) |
| *All higher courts* | *55* | *14* | *137* | (71) |

N= 93

## Unsupervised visiting contact

### *Frequency*

Unsupervised visiting contact was expected to take place in 58 cases. In five the frequency of the contact was not recorded and in two instances contact was limited to holidays because of the distances involved. Almost all the remaining 51 cases (48, 94%) involved contact on at least a fortnightly basis (table 2.21) with 61% of children seeing their contact parent at least weekly and 24% more than weekly (to a maximum of five times a week). At the other end of the spectrum there was one case in which contact was very limited, being restricted to one hour four times a year, with the majority of the contact being expected to be indirect. (There were very good reasons for this, which will be described in chapter 6). The mean number of contacts per fortnight was 2.2. This is almost half that of children who had staying contact.

The distribution of contact frequencies varied across the courts (four courts did not have a single case with visiting contact more than once a week for example, while two had half or more). However, as with staying contact, it was clear that contact on at least a fortnightly basis was the expected norm, with eight of the sample courts having all their visiting contact cases ending in this way and all but one of the remainder two-thirds. Moreover in six courts half or more cases ended up with contact on at least a weekly basis.

The highest levels of visiting contact tended to be among cases ending in the higher courts (26% of which ended in more than weekly contact compared to 15% in the family proceedings courts) (table 2.17). A higher proportion of cases in the family proceedings courts also ended with less than fortnightly contact and the mean number of contacts per fortnight was less (1.8, compared with 2.4 in the higher courts). The differences, however, were not statistically significant and the numbers are small.

### Table 2.21: Frequency of unsupervised visiting contact

| | All courts | | FPC | | Higher courts | |
|---|---|---|---|---|---|---|
| Frequency | No | % | No | % | No | % |
| | | | | | | |
| More than weekly | 12 | 24 | 2 | 15 | 10 | 26 |
| weekly | 19 | 37 | 6 | 46 | 13 | 34 |
| *At least weekly* | *31* | *61* | *8* | *62* | *23* | *61* |
| Every 1-2 weeks | 1 | 2 | 0 | 0 | 1 | 3 |
| Fortnightly | 16 | 31 | 3 | 23 | 13 | 34 |
| *At least fortnightly* | *48* | *94* | *11* | *85* | *37* | *97* |
| Monthly | 2 | 4 | 2 | 15 | 0 | 0 |
| Less than monthly | 1 | 2 | 0 | 0 | 1 | 3 |
| (N=) | (51) | | (13) | | (38) | |

N=51

## Duration of contact time

Children who only had visiting contact, as pointed out earlier, on average saw their contact parent on many fewer occasions than those who had staying contact. Contact visits were also, of course, generally shorter. As table 2.22 shows, in 52% of cases the maximum duration of any contact visit was no more than five hours and in 27% no more than three, the mean being 5.4 hours (range one to 10 hours).

However almost half the children did have the opportunity to spend a fullish day (6 hours or more) with their contact parent.

Over a fortnight children were expected to spend, on average, 10.3 hours in visiting contact (less than a fifth of the contact time children with staying contact had). The highest number of hours contact calculated over a fortnight was 25 and the least (the case previously mentioned where contact was for one hour four times a year) worked out at less than 10 minutes.

**Table 2.22: Hours expected contact time, unsupervised visiting contact**

| | Maximum any one visit | | Per fortnight | |
|---|---|---|---|---|
| Number of hours | No | % | No | % |
| Up to 3 | 12 | 27 | 8 | 18 |
| 4-5 | 11 | 25 | 7 | 16 |
| 6-7 | 11 | 25 | 6 | 14 |
| 8-10 | 10 | 23 | 6 | 14 |
| 11-15 | 0 | 0 | 5 | 11 |
| 16-20 | 0 | 0 | 6 | 14 |
| More than 20 | 0 | 0 | 6 | 14 |
| *Mean hours* | *5.4* | | *10.3* | |
| | | | | |
| (N=) | (44) | | (44) | |

Although there was considerable variation among the courts in the amount of visiting contact (table 2.23), the small numbers of cases involved make it impossible to draw any conclusions. Again cases ending in the higher courts seemed to finish up with more contact but the difference was very small (mean of 10.4 hours per fortnight compared to 10).

**Table 2.23: Unsupervised visiting contact hours by court/court level**

| | Hours per fortnight | | | |
|---|---|---|---|---|
| | Mean | Minimum | Maximum | (N=) |
| **FPC** | | | | |
| Court 1 | 15.3 | 8 | 24 | (3) |
| Court 2 | 24.0 | 24 | 24 | (1) |
| Court 5 | 4.5 | 3 | 6 | (2) |
| Court 7 | 2.3 | 2 | 2.5 | (2) |
| Court 8 | 8.0 | 4 | 12 | (2) |
| *All FPC's* | *10.0* | *2* | *24* | *(10)* |
| | | | | |
| **Higher courts** | | | | |
| Court 3 | 10.2 | 3.5 | 20 | (8) |
| Court 4 | 12.2 | 3 | 22.5 | (11) |
| Court 6 | 7.8 | 4 | 15 | (3) |
| Court 9 | 1.6 | 0.2 | 3 | (2) |
| Court 10 | 9.9 | 2.5 | 25 | (9) |
| Court 11 | 21 | 21 | 21 | (1) |
| *All higher courts* | *10.4* | *0.2* | *25* | *(34)* |

N= 44

### Supervised contact

Eleven cases, distributed across seven of the sample courts, ended with supervised contact. It should be noted, however, that only two of these cases involved contact taking place exclusively in a contact centre (and even then it was envisaged it would move on to contact supervised by the mother). In seven instances the supervision was to be undertaken by a grandparent and in two by the resident mother.
Data was only available on frequency in relation to nine of the cases and as regards duration on seven. Six involved weekly contact; two twice weekly and one fortnightly. In two cases, where contact was supervised by the contact parent's parents, contact was to take place weekly for seven hours. Duration in the other cases varied between one to four hours on any one occasion and two to four hours fortnightly.

### Indirect contact

Although many of the children who had face to face contact were also expected to have some indirect contact, for 21 children this was to be the only form of contact.

With only one exception (where telephone contact was allowed) indirect contact meant by letters, presents and cards. For the most part (11 cases) frequency was not limited. In the remainder it varied between weekly (the telephone contact case) and only at birthdays/Christmases (two cases). Six children were expected to have indirect contact on at least a monthly basis, one five times a year, the other three times a year.

Indirect contact rarely involved the use of an intermediary (4 cases only; variously a relative, the school, a social worker and the mother's solicitor). Similarly it was rare for any obligation to be placed on the resident parent (4 cases). The exceptions involved sending photographs (2) or the child's school report (1); encouraging the child to reply (1); reading the cards to the child and informing the other parent of how they were received (1); sending a disposable camera so the other parent could send photographs (1).

## Orders other than contact orders

The focus of this research was on contact applications and their outcomes. We did, however, collect basic data about other orders. As can be seen from table 2.24 the most common order was a parental responsibility order (67 of 292 completed cases, 23%) followed by residence orders (58; 20%). The majority of residence orders provided for sole residence, typically to the mother, with nine going to the father and five providing for shared residence.

Other orders were fairly unusual. It was particularly striking, given the levels of conflict in these cases, that there were only six family assistance orders, four of which were made to accompany interim orders only. There were two orders prohibiting a parent from making any further applications without permission of the court and 13 penal notices, all but one relating only to interim orders. Prohibited steps orders (section 91(14)) were more common (22) but were typically temporary (18). In contrast six of the eight specific issue orders were made as final orders. Four cases involved other orders made in the proceedings: three non-molestation orders and one leave to remove from the jurisdiction while in two cases the children were briefly made wards of court.

**Table 2.24: Orders other than contact orders**

| | | |
|---|---|---|
| | No. | % |
| *Residence* | | |
| Sole residence to mother | 44 | 15 |
| Sole residence to father | 9 | 3 |
| Shared residence | 5 | 2 |
| | | |
| Parental responsibility order | 67 | 23 |
| Parental responsibility agreement | 2 | <1 |
| | | |
| *Family Assistance Order* | | |
| As interim order only | 4 | 1 |
| As final order | 2 | <1 |
| | | |
| *Specific Issues Order* | | |
| As interim order only | 2 | <1 |
| As final order | 6 | 2 |
| | | |
| *Prohibited Steps Order* | | |
| As interim order only | 18 | 6 |
| As final order | 4 | 1 |
| | | |
| *Penal notice on contact order* | | |
| As interim order only | 12 | 4 |
| As final order | 1 | <1 |
| | | |
| *Undertakings* | | |
| Interim only | 5 | 2 |
| Final | 36 | 12 |
| | | |
| Section 91(14) | 2 | <1 |
| | | |
| Other | 6 | 2 |
| | | |
| (N=) | (292) | |

## Shared residence

The rarity of orders for shared residence was somewhat surprising to us in view of the interview data, which suggested that this was becoming more common, both in terms of a fairly equal division of the child's time between the parents and the use of shared residence orders even when the actual arrangements were nearer to conventional residence and contact.

> *I think there was a time when shared residence was opposed by the judiciary because there was a notion around that it wasn't good for children not to have a permanent base and so they were harder to argue for, even if it was what the parents themselves wanted to do. Whereas I think that has changed completely and the courts are prepared to accept a whole range of arrangements*. (Cafcass officer)

> *One thing I've seen is that in the last 18 months there seems to have been more judges that will consider shared residence, even if it's not a 50/50 split, to give the message that you're equally responsible and that you've both got the same rights. That's become more common. And sometimes the children feel more comfortable about that.* (Cafcass officer)

> *At one time shared residence was the exception and then it was decided that there didn't need to be exceptional circumstances and lawyers who advise their clients will say well did you know about this case. Particularly where a couple have just separated and dad will say well I've cared for little Jimmy as much as my wife did, they'll now be looking for more and in fact contact is now shifting very much from contact to shared residence, that's the concept they want. And I think the concept of shared residence is 2,3 4 nights a week with the other parent which is a sea change away from taking him away to a soft play area on a Sunday afternoon. I think that has benefit. Fathers tend to be more satisfied with what they're getting generally.* (Solicitor)

What was evident, however, was that there was no consensus about this change or the merits of shared residence, in either sense, and that practice varied.

### *Shared residence orders*

In our interviews with the judiciary several judges referred to their practice of making shared residence orders even when the child's time was nowhere near evenly divided between the parents because of the impact they thought this had on the perceptions of both parents and possibly the child:

> *What I'm doing much more nowadays is making shared residence orders. It makes no practical difference. But, it sends a very very strong message. I find the shared residence arrangements stick far better. Because there are power issues in contact. And sometimes it's the non-resident parent using contact to exercise power over the resident parent but it's more normal, I would say, the other way round. And by making a shared residence order, even if it's three days for one and 11 days for the other in a fortnight, it still sends a message that these children are living with both their parents. And I do it even when the parents can't get on. There is a Court of Appeal case which supports that. If I feel there is an arrangement which gives a significant input to both parents then I express it as a shared residence order.*

> *Shared residence orders enable the father, who is usually the applicant, to acquire equal status in his own eyes and in the eyes of the children and when it works it works well. I say to parties, I'm inclined to make a shared residence order; I'm not deciding the case but I'm inclined towards it, even if it means there aren't equal number of days in the week because of work commitments and someone living away. You can make a 5 day 2 day shared residence order. But the order gives equal status and that helps people get bigger for getting that order rather than I'm the resident parent and you're the one seeking contact.*

In contrast others, though rather fewer, saw the issue in a different light. For example:

> I *would still say shared residence orders are rare in this part of the world. I have made them but I don't like making them. I don't think there's any benefit, on the whole. I would like someone to tell me really what the benefit is, I don't think there is. It's the parents arguing about it, we're falling back into the pre-Children Act era of joint custody. Those orders were made all the time before the Children Act came in with the no order principle. It's the time spent with the other parent that's the important thing and one has to say what is the benefit of having a shared order as opposed to no order or residence with mum.*
>
> *If there is a residence order for mum or dad and the other one is getting contact 2 or 3 nights a week, do you really need a shared residence order? The orders we are making are for the benefit of the children and I think people forget, they're demanding their rights whereas I'm looking at the children's rights and the parent's obligations to the children.*

Solicitors too referred to some variation in approach:

> *Shared residence orders are not looked on favourably in (X) court. But (Y) court take a totally different view. Indeed on a recent application in (Y), where I was acting for the resident parent using the arguments that had been put against me when acting for the non-resident parent in (X) court I was met with laughter from the Cafcass officer 'Oh, not that old hat again!' – the prime carer being the one who should have the primary residence of the child. Totally different outlook. Those views were regarded as outdated and outmoded. They're going to have to look at that. To have a situation whereby shared residence is quite actively encouraged in one area and is totally taboo in another is just odd. And leaves the clients saying 'Well hang on, my mate's got a shared residence order. Why can't I have one?' And it's so unfair.*

### *Shared care*

Opinion on shared care, in the sense of a more or less even division of time, was also divided. Consider this interchange of views in a group interview with Cafcass officers:

> Officer 2: *In the past we didn't necessarily even think about that. I think we're being more imaginative about how can it work for this child.*
> Officer 1: *It's quite hard to split a week. They've got to cooperate really well for that sort of arrangement to work.*
> Officer 2: *But there are lots.*
> Officer 3: *Yeah, but the courts are saying that...The judges are changing. It used to be that unless parents agree and have a good relationship then shared residence doesn't work.*
> Officer 4. *Moving a child from one house to another every few days.*
> Officer 1. *But actually it does work.*
> Officer 2: *Parents can loathe each other but..*
> Officer 4: *I would recommend that if they are prepared to cooperate.*

On the whole, however, while interviewees acknowledged that shared care could work for some families, most expressed reservations:

> *It's a difficult one because I certainly don't like the idea that a child should spend 50% of time with each parent because a child is not something to be divided up. You've got to look at what's right for the child. I do think a child likes to know where they are and they do want to go to school from their own house, because that's where their stuff is. I think, as an adult, I would hate to have a suitcase all the time. But I know that's old fashioned because people tell me that children perhaps don't approach it in quite the same way, they can have two homes, in both of which they're very comfortable and very happy and it's not a problem.* (Judge).

> *Some parents come to me and say 'I want 50/50.' We have a lot of cases where they do that. That's where the problem lies, people have this perception that yes, you were living in the house with them and jointly parenting those children and that's all well and good. But you are no longer living in that house with them and the difficulty is that those children have to have a base, they have to have one place which they can call home. That usually tends to be the family home that the parent has left. You have to try and explain to the parent without care that you have to try and make things as normal for these children as possible. I have dealt with cases where the parents have managed to work it out and they live sufficiently close to the school that they can have a situation whereby the child can stay a couple of nights a week at that parent's home, because they've got their own bedroom there and its all geared up, and then come home. So they have two bases. But that's very rare, and it's only situations where you have the parents who live in proximity, and usually where they get on. Where they're being amicable. Those cases are few and far between.* (Solicitor)

Some cited research to support their view:

> *I don't personally start from the position that 50:50 care is a good idea, particularly when a child is of school age because – and there is research to back this up, that a child is more likely to thrive if they have one home. So that will obviously impact on the recommendations I make to court.* (Cafcass officer)

> *There is a body of research which says that children need a base to work from, they need a home, and truly shared residence is the antithesis of that and it does cause difficulties*. (Judge)

Others referred to their own experience of children who had been in these arrangements:

> *I meet lots and lots of fathers who are very keen on the idea of shared care. I meet very few children who are. If your mates live in the same street as one parent and not in the same street as the other parent, that has an effect. If you're leaving your trainers at one house and you know you can't go back to the other house to pick them up because you're not allowed on a Monday because it's not your day, that has an effect. Kids are on their computers chatting to their friends after school; one house hasn't got a computer. They're small points but I get an awful lot less enthusiasm from kids about 'you've got two homes now, you're going to spend equal time in each' than from parents who have come at it from an adult point of view 'of course I can organise it'. Kids just don't seem so keen.* (Cafcass officer)

> *Shared care rarely benefits the child in the long term. Certainly from my experience. Most children do need a firm base, especially if there is conflict between the parents. If they're constantly having to pack their case. I talked to a little girl last week. She was nine. She'd been in a shared care arrangement for five years, since her parents separated, they'd agreed it between themselves. The relationship between the parents wasn't great but it wasn't as acrimonious as it could be. So generally it had managed. This little girl clearly loved her mum, loved her dad, had a good relationship with them both, in a sense was OK with both, but didn't like the shared care. She'd say things like sometimes my homework book is at mum's when I'm at dad's. But it was more 'I want to see dad but I want a base, I want my things around me. And what I'd really like to do is to spend more time with mum. But what they were doing was equally sharing it and ignoring the impact on her.* (Cafcass officer)

There was particular concern about shared care arrangements where the parents had difficulty working together and therefore with the value of these arrangements for the families who come to court:

> *We are not dealing, in general, with the population who can be so co-operative as for it to be beneficial for the children to be in a shared care arrangement. It requires good communication, co-operation and our families are not there.* (Cafcass officer)

> *One thing that bothers me now. At one time we used to say well if there is high conflict it's not really in a child's interest to have shared care. But there was some kind of judgement about that. They're using it as a blanket. That bothers me, it really does seriously bother me, that in situations of high conflict the court is prepared to make shared care arrangements because I don't think that is in the child's interests. If the parents are in really really high conflict in reality it's difficult to protect the children from that.* (Cafcass officer)

## Summary

The majority of completed cases (70%; 203 of 292) ended with a contact order. A tiny minority (19; 7%) was dismissed and a further 7% (21) ended with an order of no order. Sixteen per cent (46) were withdrawn. Most outcomes (213 of 288; 74%) were reached by agreement.

Most contact orders (186 of 203; 92%) provided for face to face contact with all but one of the remainder being for indirect contact. No order or a withdrawal could mean that agreement had been reached and contact was to take place or that the non-resident parent had given up and there was to be only indirect contact or no contact at all.

Overall 79% of cases where the outcome was known (225 of 286) ended with an agreement or order for face to face contact. Forty-nine per cent (139) resulted in staying contact and 20% (58) in unsupervised visiting contact. Only 10 (4%) ended in supervised contact, 7% (21) in indirect contact and 14% (39) in no contact at all.

Four factors proved to have a statistically significant association with the type of contact expected to occur: whether there were allegations or concerns about serious welfare issues; whether there was any contact between the child and the non-

resident parent at the point the application was made; the position of the resident parent at the start of proceedings; and the age of the index child at the end of the proceedings.

There was variation between the courts, and between the higher and lower courts, in the balance of outcomes. Differences in the profile of the court workload did not appear entirely to account for this.

*Staying contact* (139 cases) was most commonly expected to take place on at least a fortnightly basis. The most common pattern was two overnights per fortnight (49 of the 114 where information was available; 43%) although a third of cases had less than this and a quarter more. The average duration of staying contact (excluding holiday contact) worked out at 51 hours every two weeks, ranging from 14 hours to 137. More than two thirds of children (68%; 66 of 97) were expected to spend between 25 and 72 hours, with only 15% having more than this time and 17% less. Thirty-five per cent of cases also had visiting contact, typically on an additional two occasions per fortnight. In 59% (66 of the 111 with available data) children were expected to have contact on four or more days a fortnight with 32% having six or more. At the other end of the spectrum 5% (6) were limited to one day a fortnight; 15% (17) to two and 20% (22) to three.

On average, the expected combined visiting and staying contact time worked out at 55 hours per fortnight, with only 8% of children (7 of 93) spending no more than 24 hours over this period and most spending considerably more.

*Unsupervised visiting contact* (58 cases) also typically took place on at least a fortnightly basis, with the children in 61% of cases (31 of the 51 on which information was available) seeing their non-resident parent weekly or more and 94%, (48) at least fortnightly. The mean number of contacts per fortnight was 2.2. The average length of a single contact visit was 5.4 hours, ranging from one to 10 hours. Almost half the children (21; 48% of the 44 for whom information was available) had visits lasting between six and 10 hours. The average contact time per fortnight was 10.3 hours.

*Supervised contact* (11 cases) was rare as a final outcome and the supervisor was typically a family member. It was usually to take place weekly or fortnightly, the duration varying from one to seven hours.

*Indirect contact* (21) almost always meant by letters, presents or cards. In half the cases (11) no limit was set on frequency. In the rest it varied between weekly (one case) and only at birthdays/Christmases (2). Six children were expected to have indirect contact on at least a monthly basis, one five times a year, and one three times a year. Indirect contact rarely involved the use of an intermediary (4 only). It was rare (4 cases) for any obligation to be placed on the resident parent to facilitate indirect contact.

Of the other orders made in the proceedings the most common were for parental responsibility (67 of 292 completed cases, 23%) followed by residence orders (58; 20%). The majority of residence orders provided for sole residence, typically to the mother, only five providing for shared residence.

Other orders were fairly unusual and were mainly made during proceedings rather than as a final order. They included prohibited steps (22) or specific issue (8) orders; penal notices (13); non-molestation orders (3) and an order prohibiting further applications without leave of the court.

# Chapter 3: The relationship between the contact which was expected to take place as the result of the proceedings and the application made by the non-resident parent.

## Introduction

Chapter 2 presented data on the outcomes of court proceedings in terms of what, if any, contact children were expected to have with their non-resident parent. In this chapter we look at how those outcomes tallied with what applicants were asking for at the point they brought the proceedings, *insofar as that could be established*. It is a notable feature of these proceedings, however, that very often applicants couched their aims in the broadest terms –eg 'a contact order', 'regular contact' - on the initial documentation, and while the *type* of contact wanted could often be established, details of how much and how often were frequently missing and unless elaborated on in early statements, could not be clarified. Although sometimes matters became clearer towards the end of proceedings, since by this time positions might well have modified, the information could not be used as a reliable measure.

The majority of applications, as one would expect, were made by non-resident parents (289; 94%). Of these 272 were both concluded within the research period and had a relevant contact outcome (ie cases in which the contact parent died, the parents were reconciled or residence changed[6], are excluded). It is on these cases that the chapter will focus, particularly the 266 in which at least some information was available about the outcome. The chapter will conclude by examining outcomes in relation to the initial position of resident parent respondents.

### Does the formal application reflect what applicants really wanted?

Before examining how the outcomes related to what the non-resident parent was initially seeking, however, it is important to enter a cautionary note: there is no way of knowing how well what was applied for related to what the applicants really wanted in the way of contact.

All but two of the solicitors we interviewed acknowledged influencing what non-resident parents asked for. As one put it: '*my clients' applications do not reflect where they started when they arrived in this room'*. This could mean, on the one hand, that applications asked for more contact than the non-resident parent expected or was prepared to accept ie it was a bargaining position:

> *Fathers always ask for more than they may ultimately end up with because if you don't ask for it you don't get it. It's a bit like the Moroccan street market I suppose, you might be haggling over what you get, but what you might want might be a lot less than what you ask for, because if you didn't ask for it you wouldn't get what you've got.*

.

[6] There were three cases in this group. In two the change represented a reversion to the status quo existing until a short time before proceedings started, in each because of the resident parent's illness. In the third the resident mother agreed to transfer residence to the father. None of these cases involved the court transferring residence because of contact difficulties.

> *I think there is a view that unless you put your best case scenario in your C1 you're not going to get half of it so I think a lot of people do put more in than they can hopefully achieve. But you've got to start somewhere, you may as well ask for what... your best-case scenario you put in because it's always compromise. It's a negotiating position.*
>
> *Sometimes we ask for every weekend in the hope that we'll get three out of four, or two out of four. So there is a bit of gamesmanship.*
>
> *Sometimes it's asking for as much as you can get on the basis that you will settle for something that falls short.*

Conversely it is also clear that what non-resident parents ask for may well be a good deal less than they ideally wanted. Thus many solicitors reported clients coming to them with, as one put it '*expectations up on the ceiling'* and trying to bring them down.

> *I'm not shy in telling them they won't get what they want. I'll say to them I will ask for whatever you want but realistically in my experience this is what might happen and they might say well that's unfair and I'll say yes, it may be, but I've got to tell you as it is and this is likely to happen because as a solicitor we can build clients expectations up sometimes unnecessarily and at the end of the day they're just disappointed.*
>
> *Certainly we in the team here will always try and talk people out of making daft applications because we will say 'Realistically, your application is going to fail. If you make an application that is so clearly doomed to failure you run a risk that the court is not going to take you seriously. You are better off making an application that has a real prospect of success. Go for what you know you can get'.*

A crucial element in this process is the solicitor's experience of what the particular court is likely to find acceptable:

> *Some (clients) do come with unrealistic expectations. I sometimes say you are able to make that application but I don't think you will be successful.*
>
> *We do advise clients potentially what can happen, you're duty bound to do that, not just do exactly what the client wants.*
>
> *What I tend to do is to go with what is usual for our court.*

However this was also interwoven with the solicitor's own perspectives on what was feasible and in the interests of the child. Requests for more or less equal sharing of time with the child were frequently offered as examples of this shaping of expectations:

> *For instance, a three year old girl who had lived with her mum since separation. They lived 30 miles apart. My client wanted the child 4 or 3 nights a week, shared residence. There's no reason why he should have residence over the mother and I just couldn't see the court ordering shared residence when they lived so far apart. I just felt it would be too much to-ing and fro-ing for the child for the court to agree.*

> *If a non-resident parent came and said right, I want 50% of the time, I'd be saying, depending on the circumstances, you're not going to get it but if you want me to fight for that it might jeopardise the other bits you get because then the resident parent might say they're taking the child away and that might not get you the best deal.*

It also applied, however, to the frequency, amount and possibly even the type of contact sought:

> *They are so desperate and they are so sad in that situation, ideally they want to see their children on a daily basis. A lot of what we do is aiming to achieve something that is realistic. If you are working seven nights a week you can't have overnight contact. If you are working shift patterns then it adds another dimension to the pattern of contact. We aim to achieve what they are seeking but to look at mum's commitments as well and what the children do 'Oh yes, they go to football on Tuesday night'. So it's pitching it at that right level.*
>
> *Sometimes dads will say I want half the holidays. And you say well how much holiday do you get because you're looking at half of 13 weeks*
>
> *If, for example, you have a father who is seeing his child half a day on a Sunday. He might say, ideally I would like Friday to Sunday. I would say look, that's every weekend, he needs quality time with his mother. So why don't we say Saturday till Sunday and one night during the week. He might say, OK, we'll go for that. If he gets one night on a weekend then he may be happy and he might not be that bothered about the night during the week, he might just have a teatime or a couple of teatimes.*

With these caveats we turn now to examining how the outcome of the court proceedings (in the sense of the contact the court would have expected to take place as the result of the legal disposal of the case) related to what non-resident parents were asking for at the point they made their application.

## Outcomes of applications to establish/re-establish face to face contact

### Table 3.1: Outcomes of applications for face to face contact where this was not occurring at the point the application was made

| | No. | % |
|---|---|---|
| *Face to face contact* | *129* | *70* |
| Staying | 68 | 37 |
| Unsupervised visiting | 45 | 25 |
| Supervised visiting | 7 | 4 |
| Not known if staying or visiting | 7 | 4 |
| As/if child wanted | 2 | 1 |
| | | |
| *No face to face contact* | *55* | *30* |
| Indirect only | 20 | 11 |
| No contact | 34 | 19 |
| Unclear if indirect | 1 | 1 |
| | | |
| (N=) | (184) | |

The proportion of applications in which contact was re/established varied widely among the different courts (from 27% to 100%). It should be noted, however, that there was only one court in which it fell below 50%, with eight courts having proportions of at least 60% and seven of 70%. Applicants were marginally more likely to be successful in the family proceedings courts than the higher courts table 3.2).

**Table 3.2: Success of applications to establish/re-establish face to face contact by court level (where no direct contact at point of application)**

| | Face to face contact | | | | |
|---|---|---|---|---|---|
| | Established | | Not established | | |
| | No. | % | No. | % | (N=) |
| *Court level* | | | | | |
| FPC | 40 | 80 | 10 | 20 | 50 |
| Higher courts | 89 | 66 | 45 | 34 | 134 |

N= 184

**Table 3.3: Factors associated with the outcome of applications to establish/re-establish face to face contact**

| | Face to face contact | | | | |
|---|---|---|---|---|---|
| | Established | | Not established | | |
| | No. | % | No. | % | (N=) |
| *Serious welfare issues* | | | | | |
| Yes | 74 | 62 | 46 | 38 | (120) |
| No | 55 | 86 | 9 | 14 | (64) |
| | | | | | |
| *Previous face to face contact* | | | | | |
| Yes | 112 | 72 | 43 | 28 | (155) |
| No | 14 | 56 | 11 | 44 | (25) |
| | | | | | |
| *Time since child last seen* | | | | | |
| Within 3 months | 51 | 85 | 9 | 15 | (60) |
| 4-6 months | 31 | 71 | 13 | 30 | (44) |
| More than 6 months | 39 | 58 | 28 | 42 | (67) |
| | | | | | |
| | | | | | |
| *Principle of contact disputed* | | | | | |
| Yes | 55 | 57 | 41 | 43 | (96) |
| No | 74 | 84 | 14 | 16 | (88) |
| | | | | | |
| *Applicant* | | | | | |
| Non-resident father | 124 | 71 | 52 | 30 | (176) |
| Non-resident mother | 5 | 63 | 3 | 38 | (8) |

N=184

As can be seen from table 3.3, applicants who had had some direct contact in the past were more likely to be successful in getting it re-established. Non-resident

fathers were marginally more successful than non-resident mothers. The only statistically significant factors, however, were first, the interval since the child was last seen, (p<.005); whether the principle of contact was in dispute (p<.001); and whether the resident parent had raised concerns about serious welfare issues (p<.000).

## Outcomes of applications for staying contact

Applications for staying contact were also, typically, successful, with almost four in five of those who achieved face to face contact getting overnight stays.

### Table 3.4: Outcomes of applications for staying contact

| | No. | % |
|---|---|---|
| | | |
| Staying contact | 110 | 67 |
| Unsupervised visiting contact | 20 | 12 |
| Supervised visiting contact | 5 | 3 |
| Face to face, type unknown | 6 | 4 |
| As/if child wanted | 1 | <1 |
| *Any face to face contact* | *142* | *86* |
| | | |
| Indirect contact | 10 | 6 |
| No contact | 11 | 7 |
| No face to face contact, details unknown | 1 | 1 |

N=164

There were 179 cases in which it was clear from the file data that the non-resident parent was seeking staying contact, although at least 11 expressed this in terms of a medium-term, rather than immediate, goal. Of the 164 cases in which outcome data was available 110 applications (67%) were successful (table 3.4). This works out at 78% of the 142 applications which resulted in any face to face contact. There was only one court in which this latter proportion was less than 50%, while in six courts it reached 80% or more.

Eighty-six per cent of applicants for staying contact (142 of 164) ended up with face to face contact. Analysis of this sub-group of cases indicates that there were only two statistically significant factors associated with whether or not they were successful in getting overnights (table 3.5). The first was the initial position adopted by the resident parent (p=.000). As one would expect, virtually all the cases in which there was no indication that the resident parent had been initially opposed to staying contact ended with such contact (56 of 58; 97%). Nonetheless, even where the resident parent did object, applicants were more likely to succeed than not. Thus, of the 50 cases in which the resident parent had been initially opposed to any contact or unsupervised contact 74% (37) ended with overnight stays. Rather unexpectedly the proportion was somewhat lower (63%; 17 of 27) where the resident parent had only opposed staying contact.

**Table 3.5: Factors associated with success of applications for staying contact (cases where there was to be face to face contact only).**

| | Staying contact achieved | | |
|---|---|---|---|
| | No. | % | (N=) |
| *Initial position of resident parent** | | | |
| Principle opposed | 23 | 74 | (31) |
| Unsupervised contact opposed | 14 | 74 | (19) |
| Staying contact only opposed | 17 | 63 | (27) |
| None of these | 56 | 97 | (58) |
| | | | |
| *Time since child last seen** | | | |
| Within 3 months | 77 | 89 | (87) |
| 4-6 months | 12 | 67 | (18) |
| More than 6 months | 15 | 75 | (20) |
| | | | |
| *Face to face contact at time of application* | | | |
| Yes | 49 | 88 | (56) |
| No | 58 | 76 | (76) |
| | | | |
| *Serious welfare issues* | | | |
| Yes | 48 | 79 | (61) |
| No | 62 | 83 | (73) |
| | | | |
| *Court level* | | | |
| FPC | 25 | 69 | (36) |
| Higher courts | 84 | 85 | (100) |
| | | | |
| *Applicant* | | | |
| Non-resident father | 100 | 81 | (124) |
| Non-resident mother | 10 | 83 | (12) |

*statistically significant p<.05

The second statistically significant factor (p<.05) was whether there had been contact in the three months prior to the application. Whether or not face to face contact was occurring at the point the application was made was not found to be statistically significant although there was a trend in the expected direction. Applicants were also more likely to be successful where no serious welfare issues were raised. Non-resident mothers fared slightly better than fathers, as did applicants whose cases ended in the higher courts. However none of these differences were statistically significant.

The child's age bore an interesting relationship to whether or not there was to be staying contact, the proportion rising from 77% for children still under three at the end of proceedings to 83% of those aged between five and 9 then falling away again in adolescence to a low of 67% for teenagers.

It is important to note, however, that none of these factors led to success rates of less than 63%.

## The frequency and amount of staying contact compared with what applicants were seeking

Data on the frequency and duration of the staying contact wanted and obtained was quite sparse. Such information as was available, however, indicates that applicants were more likely to get what they had asked for than not.

### *Frequency*

Of the 110 cases in which non-resident parents sought and achieved staying contact, there were only 62 in which information was available both on what applicants wanted and what they achieved in terms of frequency. A case by case comparison of the frequency of contact sought and obtained shows that 66% (41) got at least as much as they asked for, of whom seven achieved more.

Only a third (21; 34%) did not achieve what they initially sought. These applicants were typically those who had sought contact on at least a weekly basis, who ended up with fortnightly or less (15 of 21).

### *Number of overnights on any one occasion*

In 39 cases the maximum number of nights wanted and obtained in any period of regular staying contact (ie excluding holiday contact) could be identified. Again, the majority of applicants (26; 67%) obtained as much as they had asked for (19) or more (7). Only 13 (33%) were unsuccessful, in two of which the duration of stay was left up to the child.

### *Number of overnights per fortnight*

In 58 cases there was data on the number of nights per fortnight sought and obtained. This indicated that 64% of these applicants (37) achieved what they initially sought (of whom 14 achieved more). However 21 (36%) got less.

### *Visiting contact in addition to staying contact*

Twenty-four applicants specified that they wanted additional visiting contact. Nineteen (79%) were successful.

### *Hours of contact time*

Information about the actual hours of contact time wanted and obtained was only available in 15 cases. Most of these applicants (11) got at least as many hours as they had asked for and indeed the most common outcome (7) was for them to get more. Only four applicants got less, the discrepancies ranging from 17 to 49 hours per fortnight.

## Summary. Staying contact: outcomes which did not meet expectations.

In total, of the 110 non-resident parents who sought and obtained staying contact, 35 were known to have failed to achieve what they wanted in terms of either frequency, duration, number of overnights per fortnight, additional visiting, or total hours (table 3.6).

**Table 3.6: Outcomes which did not meet expectations of some aspect of staying contact**

| | No. | % |
|---|---|---|
| Less frequent | 21 | 19 |
| Shorter stay | 13 | 12 |
| Fewer overnights than wanted | 21 | 19 |
| Did not get additional visiting wanted | 5 | 5 |
| Fewer hours than specified | 4 | 4 |
| *Any of the above* | 35 | 32 |

N=110

It is important to make two points in relation to this data.

First, it cannot be concluded that because there were only 35 cases in which there was evidence that applicants who obtained staying contact did not achieve everything they wanted in terms of quantum, that the remainder were necessarily satisfied, since data on what was sought and secured was not always available.

Second, conversely, just because some expectations were not met does not mean that applicants would have been necessarily disappointed with the overall package. Twenty-seven of the 35 succeeded in at least one respect (ie either in terms of frequency, length of stay, number of overnights, additional staying contact or overall hours). Indeed in 15 our judgement was that the total package probably represented a positive outcome in terms of the actual amount of staying contact enjoyed, with only 20 being clearly disadvantageous.

This is, however, a subjective judgement and the hard data indicates that 35 of the 110 non-resident parents who got staying contact (32%) did not achieve everything they sought.

In addition, as reported in the first part of this section, 22 did not even get face to face contact and 26 only got visiting contact. In total then, 83 of the 179 applicants for staying contact (46%) would have had grounds for disappointment in that they did not obtain what they had asked for at the outset.

## Outcomes of applications for visiting contact only or where the type of contact wanted was not specified

There were 101 cases in which the non-resident parent was either recorded as only seeking visiting contact (46), or there was no indication that they were seeking overnights (55). Some outcome data was available on 99 of these cases.

### Achieving face to face contact

Applicants in this group were much less likely to end up with face to face contact than those who had sought staying contact (66%; 65 of 99, compared with 86%; 142 of 164). Nonetheless most did, (table 3.7) the proportion being slightly higher for those who had specified they were only seeking visiting contact than for those where this was not clear (69% compared with 63%). Indeed some applicants finished up with staying contact (16% overall; 18% among those who had only specified visiting contact), a measure of how far cases can move on over the course of proceedings.

**Table 3.7: Outcomes of applications for visiting contact**

| | Type of contact wanted | | | | | |
|---|---|---|---|---|---|---|
| Outcomes | Visiting only | | Not specified | | Either | |
| | No. | % | No. | % | No. | % |
| *Face to face contact* | *31* | *69* | *34* | *63* | *65* | *66* |
| Staying contact | 8 | 18 | 8 | 15 | 16 | 16 |
| Unsupervised visiting | 20 | 44 | 18 | 33 | 38 | 38 |
| Not known staying/visiting | 0 | 0 | 6 | 11 | 6 | 6 |
| As/if child wanted | 0 | 0 | 1 | 2 | 1 | 1 |
| Supervised visiting | 3 | 7 | 1 | 2 | 4 | 4 |
| | | | | | | |
| *No face to face contact* | *14* | *31* | *20* | *37* | *34* | *34* |
| Indirect only | 5 | 11 | 5 | 9 | 10 | 10 |
| No contact | 9 | 20 | 15 | 28 | 24 | 24 |
| | | | | | | |
| (N=) | (45) | | (54) | | (99) | |

## Achieving unsupervised contact

Applicants who ended up with visiting contact were also almost always successful in getting it on an unsupervised basis (60 of the 64 who had sought this; 94%).

One father was initially seeking enforcement of an order made in previous proceedings for contact at a contact centre. He finished up with staying contact.

All the other applications appear to have been for unsupervised contact, although seven non-resident parents indicated that in order to re-establish contact they were prepared to accept a period of supervision. Eight applicants, whose ex-partners, from the evidence available, seem to have sought to control contact, specifically asked for contact to be unsupervised, or to take place at venues away from the child's place of residence. Supervision was a specifically disputed issue in 19 cases while in a further 42, since the principle of contact was opposed, it may reasonably be assumed that unsupervised contact would also be opposed.

In terms of these sub-groups identified above:

- Five of the eight applicants who had specifically asked for contact to be unsupervised achieved their aims, but one had to accept supervision, one ended up with only indirect contact and another got no contact at all.
- In contrast only two of the seven who had been prepared to accept supervised contact as a starting point achieved unsupervised contact, indeed one got staying contact. Of the others three ended up with indirect contact only and two no contact.
- 14 of the 19 applicants in cases where supervision had been a specific issue obtained unsupervised contact (with two getting staying contact [a success rate of 74%]). One person got indirect contact only and three no contact at all.
- Where the resident parent opposed either unsupervised contact or any contact at all just over half the applicants (52%; 31 of 60 where data was available) were successful, with two getting supervised contact; nine indirect contact only and 19 no contact.

After adding in the data on supervision we calculated that across the whole group of applicants for visiting contact 38% (38 of 99) were known not to have achieved their initial objective in that they either did not get face to face contact at all (24) or only got supervised contact (4), while 16% (16) may have done better than hoped, by getting staying contact rather than just visiting[7].

The proportion of applicants disappointed on these counts varied across the courts, from none to 55%. However, only two courts had more dissatisfied than satisfied applicants. Applicants were marginally more likely to be disappointed in the higher courts (40% compared to 36%) but the difference was not statistically significant[8].

The critical factors associated with whether or not an applicant achieved his/her objectives in terms of getting unsupervised visiting contact were:

- whether or not face to face contact was happening at the point the application was made (55% of those without such contact failed to achieve their objectives, compared to none of the others). (Statistically significant $p<.005$)
- how long it had been since the child was last seen (89% of those who had seen the child within the last three months were successful, compared to 63% of those where between four and six months had elapsed and only 42% with a gap of more than six months; $p=.000$)).
- whether there were serious welfare issues (49% of applicants were successful in cases where such issues were raised; compared to 62% of other cases; $p<.005$).

### *Achieving the frequency and duration of visiting contact sought*

Unfortunately information on what applicants were seeking in terms of the frequency and duration of visiting contact was very sparse. The little information that could be gleaned, however, indicated that, in contrast to the mainly successful outcomes for those who achieved staying contact, most of those who sought and achieved unsupervised visiting contact failed to achieve the quantum of contact they had initially asked for. Only five (of the 12 on which information was available) obtained the frequency they sought and two (of 6) the duration. In total eight (of the 12 where information was available), did not get the quantum of contact they had asked for. This is a low proportion of all the applicants who sought and achieved unsupervised visiting contact (13% of 61). However if the disappointment rate of 67% found in the cases where the quantum sought and obtained was known is representative of a more general pattern, it would work out at 49 of the 61 cases.

## Summary. Visiting contact. Outcomes which did not meet expectations.

There were 99 cases in which the application was for visiting contact only or the form of contact wanted was not known and outcome data was available. Thirty-four (34%) did not succeed in getting any face to face contact and a further four had to settle for supervised (4%).

---

[7] The figures for cases where it was known that only visiting contact was wanted were very similar so including cases where applicants might have been seeking staying contact although this was not specified has clearly not given an unduly positive slant to the findings

[8] It was not feasible to compare outcomes for mothers and fathers since only two mothers applied for visiting contact only.

In addition, of those who sought and achieved unsupervised contact eight (13% of 61) were known not to have achieved either the frequency or duration sought (table 3.8). In one additional case contact was to be as and when the child wished. This gives a total of 47 applicants (47%) who failed to achieve their initial expectations.

**Table 3.8: Outcomes which did not meet some expectations of visiting contact**

| | No. | % |
|---|---|---|
| Face to face contact not achieved | 34 | 34 |
| Unsupervised contact not achieved | 4 | 4 |
| *Type of contact not achieved* | *38* | *38* |
| Frequency not achieved | 7 | 7 |
| Duration not achieved | 4 | 4 |
| *Either of these* | *8* | *8* |
| Contact as child wished | 1 | 1 |
| Any of the above | 47 | 47 |
| | | |
| (N=) | (99) | |

These, however, probably should be regarded as minimum figures. As noted above, in the few cases where data was available on the quantum of contact sought and achieved the 'disappointment rate' was 67%. If this proportion were to be representative of the general pattern (and again there is no way of knowing whether this is so) then the number dissatisfied with the quantum of contact would be 41 (67% of 61). Thus possibly as many as 80 applicants for visiting contact would have failed to meet their initial objectives (38 who did not achieve the type of contact sought; one where contact was to be as the child wished and the 41 who may not have achieved the quantum). This would work out at 81% (of 99).

Across the courts the proportion of applicants *known* to have failed to reach their objectives varied from 17% to 100%. In five courts more than half the applicants did not achieve the outcome they sought. Applicants whose cases ended in the higher courts were more likely to be dissatisfied than those in the family proceedings court (52% compared with 42%) but the difference was not statistically significant.

Two of the three non-resident mother applicants were unsuccessful, compared to just under half the non-resident fathers (46; 48%) but the numbers are too small for any conclusions to be drawn from this.

## Outcomes of applications to enforce existing orders or agreements

Thirty applications by non-resident parents (10% of 289), were brought, at least in part, because of the resident parent's alleged non-compliance with an order (27) or agreement (3) made in previous court proceedings. It should be noted, however, that typically the application was not couched specifically in terms of enforcement of the contact arrangements and there were only 10 initial applications for penal notices and none for committal or punitive remedies. Most of the applicants in these cases (28) (and all those seeking penal notices) were non-resident fathers. (In addition there was one case in which the contact application was brought by the resident parent but the non-resident parent made a cross-application seeking a penal notice).

In most cases (23) at the point the application was made face to face contact had actually stopped completely. In the remainder the issue was either about non-compliance with one element of the arrangements (eg for holiday contact or additional visiting) or about intermittent non-compliance. Generally, when contact had ceased, the application was made quite quickly (12 of the 23 being made within three months of the time the child was last seen), but three applicants waited for up to six months and seven longer than this (table 3.9).

**Table 3.9: Enforcement cases: interval since previous proceedings by time since child last seen**

| | Contact occurring | Contact ceased Interval since child last seen | | | All enforcement cases | |
|---|---|---|---|---|---|---|
| | | within 3 months | 4-6 months | > 6 months | No. | % |
| Interval previous proceedings | No. | No. | No. | No. | No. | % |
| Up to six months | 1 | 3 | 0 | 1 | 5 | 17 |
| 7-12 months | 2 | 2 | 3 | 0 | 7 | 24 |
| 13-18 months | 0 | 1 | 0 | 1 | 2 | 7 |
| 19-24 months | 1 | 3 | 0 | 0 | 4 | 14 |
| More than 2 years | 3 | 3 | 0 | 5 | 11 | 38 |
| | | | | | | |
| (N=) | (7) | (12) | (3) | (7) | (29)* | 100 |

* Data not available on one case

The interval between the end of the previous proceedings and the start of the proceedings for enforcement varied widely – (from two months to 10 years) with only 12 of the 29 where information was available being no more than a year and five within six months. At the other end of the spectrum, in 11 cases more than two years had elapsed. As table 3.9 shows, however, in most cases the arrangements had not broken down very quickly, sometimes they had survived for a number of years. Of the 17 cases where the previous proceedings had ended more than a year before, for instance, there were only six in which the child had not been seen for more than six months. This suggests that immediate and complete defiance of a final court order is something of a rarity.

All the 30 cases brought by non-resident parents in which enforcement was sought concluded within our data collection period, although one case ended, very sadly, with the non-resident parent's death. Since this case will not appear in any of the subsequent chapters, and because it was one of the clearest examples of a resident parent's persistent non-compliance, the case is outlined here.

Case 909. The children were aged 3 and 5 when their parents separated, the mother bringing the children back to this country, father continuing to work abroad. Litigation had been more or less continuous for three years. Mother initially agreed to short periods of contact but refused to let the children leave the country for staying contact, expressing fears that they would not be returned and that father could not care for them properly. Mother obtained a residence order; father got staying contact but only in the UK. A welfare report concluded that the children were attached to both parents and that father did not present a risk.

Father then alleged that mother had arranged to take the children abroad when he had planned to be in the UK (which resulted in a more tightly defined order) and four months later applied for a penal notice, after the children had not been made available for contact on a number of occasions, including the whole of one holiday. A consent order was made, the parents, it was recorded, having '*agreed to behave properly to each other over the conduct of contact visits*'.

Within a couple of weeks the father was back in court again seeking a penal notice, having come to the UK as arranged but being refused contact. Another order was made specifying contact over the next holiday period and according to the file the judge '*encouraged mother to take a more positive approach whilst warning of the consequence if he is left with no other resort*.' Mother again refused face to face contact and by the time the father applied, for the third time, for a penal notice, telephone and e-mail contact had also stopped.

This was the sample application. By this time father had spent thousands of pounds on legal fees, long distance flights and accommodation to enable him to have staying contact and the children allegedly did not want to see him. A welfare report had been ordered.

In another case, where the parents reached agreement, the outcome of the proceedings in terms of contact was unknown. In the remaining 28 cases, as can be seen from table 3.10, in 12 the contact which was expected to take place as the result of the proceedings was of the same *type* as under the previous court order or agreement. This was most likely to be the case where the previous arrangements had included staying contact (11 of 19). However five ended up with no direct contact and one with only visiting contact. Where there had only previously been arrangements for visiting contact half (4 of 8) ended with no direct contact, although one actually ended with staying contact. The only case in which the previous arrangements had been limited to supervised contact (in a contact centre) ended with only indirect contact.

**Table 3.10: Enforcement cases: contact outcome by contact arrangements agreed or ordered in the previous proceedings**

| | Previous contact arrangements | | | | | |
|---|---|---|---|---|---|---|
| | Staying | | Unsupervised visiting only | | Supervised visiting only | |
| *Contact expected as result of sample proceedings* | No. | % | No. | % | No. | % |
| Staying | 11 | 58 | 1 | 0 | 0 | 0 |
| Unsupervised visiting | 1 | 5 | 2 | 0 | 0 | 0 |
| Supervised visiting | 0 | 0 | 0 | 0 | 0 | 0 |
| Face to face, type unknown | 2 | 11 | 1 | 0 | 0 | 0 |
| Indirect only | 3 | 16 | 2 | 1 | 1 | 100 |
| No contact | 2 | 11 | 2 | 0 | 0 | 0 |
| | | | | | | |
| (N=) | (19) | | (8) | | (1) | |

In terms of how the details of the contact which was expected to take place as the result of the contact compared with the previous arrangements, in two there was insufficient data on either the original arrangements or those made as the result of the proceedings.

Outcomes in the remaining 26 cases were mixed. However only eight applicants were entirely successful in getting the terms of the original order or agreement reinstated or improved on, and, where sought, obtaining a penal notice (table 3.11). A further four got the order confirmed though they did not manage to get a penal notice attached. Of the remainder there were 14 who clearly did not succeed in any respect with 10 getting no face to face contact, two getting the amount of contact reduced and two getting defined orders changed to either reasonable contact or as and when the child wanted contact.

### Table 3.11: Outcomes of applications for enforcement

| | No. | % |
|---|---|---|
| *Order reinstated* | | |
| Order reinstated and penal notice as requested | 2 | 8 |
| Order reinstated, penal notice not sought or made | 6 | 23 |
| Order reinstated, penal notice not granted | 4 | 15 |
| | | |
| *Order not reinstated* | | |
| No contact | 4 | 15 |
| Indirect only | 6 | 23 |
| Amount of contact reduced | 2 | 8 |
| Defined order changed to reasonable contact/as child wanted | 2 | 8 |
| | | |
| (N=) | (26) | 100 |

In all, we calculate that 18 parents (62%) might consider themselves disappointed with the outcome of their application for 'enforcement', including 14 who failed entirely.

Applicants were more likely to be successful in the lower courts (67% compared with 26%), but since the family proceedings courts only handled three of these cases no conclusions can be drawn from this. The proportion of unsuccessful applications in the four higher courts represented ranged from 50% to 100% but the two courts at the extremes handled only two cases each. Of the two county courts which had the highest numbers of applications in one six out of seven applications did not entirely succeed and in the other eight out of 12.

There were no statistically significant factors linked with the success or otherwise of applications for enforcement although applicants were more likely to fail if the resident parent raised serious welfare issues (80%; 12 of 15; compared to 55%; 6 of 11).

Interestingly, although applications were more likely to fail when more than two years had elapsed since the previous proceedings (78%; 7 of 9; compared to 63%, 10 of 16), within the two year period the more recent orders and agreements were no more likely to be enforced than older ones, nor were they more likely to attract penal notices.
Applicants tended to be less successful if contact was actually occurring at the point the application was made (5 out of 6 failing; 83% compared to 65%; 13 of 20) probably because in those cases it was only the details of contact that were at issue.

Both the non-resident mothers who sought enforcement were unsuccessful, compared to 16 of the 24 fathers (where details were available).

We look more closely at the circumstances of these 'enforcement' cases in subsequent chapters.

## *Non-resident parents whose expectations of contact were not met: a summary*

Overall, in almost half of the completed relevant cases[9] in which non-resident parents had come to court to achieve some form of face to face contact (128 of 269; 48%) there was evidence that the outcome fell short in some respect of what the applicant had originally sought. Thus:

- 85 (32%) did not achieve the type of contact they had initially sought:
  - 56 failed to achieve face to face contact;
  - 25 got face to face contact but only in the form of visiting contact rather than the staying contact they had sought (including five with supervised contact);
  - 4 achieved their objectives in that they got face to face contact but had to accept that contact would be supervised
- 43 achieved the type of contact sought but not the quantum desired:
  - 8 were successful in obtaining visiting contact but did not achieve what they had hoped for in terms of frequency or duration;
  - 35 were successful in getting staying contact but did not achieve what they had hoped for in terms of frequency, duration, or visiting in addition to staying.

In addition, there were four cases in which the applicant did not achieve a penal notice although in other respects they were successful.

There was virtually no difference overall between the higher and lower courts in the proportion dissatisfied with some aspect of the contact outcome. Among the family proceedings courts the proportion varied widely from 27% to 88%, which is probably due to the smaller sample sizes. In the higher courts the range was smaller, from 35% to 63% (table 3.11).

**Table 3.12: Unrealised aims by court**

| Court | No. | % | (N) |
|---|---|---|---|
| ***All FPCs*** | *35* | *51* | *(69)* |
| Court 1 | 9 | 56 | (16) |
| Court 2 | 6 | 55 | (11) |
| Court 5 | 9 | 47 | (19) |
| Court 7 | 4 | 27 | (15) |
| Court 8 | 7 | 88 | (8) |
| | | | |
| ***All higher courts*** | *97* | *50* | *(194)* |
| Court 3 | 26 | 47 | (55) |
| Court 4 | 30 | 63 | (48) |
| Court 6 | 8 | 35 | (23) |
| Court 9 | 11 | 41 | (27) |
| Court 10 | 15 | 48 | (29) |
| Court 11 | 7 | 58 | (12) |

[9] Excluding cases where the proceedings were ongoing, the outcome was not known, the parents had reconciled, one parent had died or residence had changed).

## Outcomes of applications by the non-resident parent for orders other than contact orders

In 147 of the completed cases the non-resident parent applying for a contact order had also applied for other orders. As can be seen from table 3.13 applications for residence were largely unsuccessful, there being only five cases in which residence actually changed (and in two of these the children had only been living briefly with the parent who 'lost' residence prior to the proceedings. Three applications for sole residence resulted in shared residence. However none of those who had applied for shared residence were successful.

### Table 3.13: Outcomes of applications for residence orders made by non-resident parents applying for contact orders

| | Residence to applicant | | Shared residence | | Residence to other parent/no order | | |
|---|---|---|---|---|---|---|---|
| | No. | % | No. | % | No. | % | (N=) |
| Sole residence | 5 | 14 | 3 | 8 | 28 | 78 | (36) |
| Shared residence | 0 | 0 | 0 | 0 | 10 | 100 | (10) |
| | | | | | | | |

Success rates for other applications were somewhat better, with 59% of applicants who sought parental responsibility orders achieving this (and two others obtaining parental responsibility agreements) and just over half of those who applied for a prohibited steps order succeeding. Six of the 14 who sought penal notices succeeded (3 of the 9 who applied for this at the start of the case and 3 of the 5 where the application was made in the course of the proceedings) although notably there was only one case in which a penal notice was attached to the final order.

### Table 3.14: Outcomes of applications for orders other than residence made by non-resident parents applying for contact orders

| | Order made | | |
|---|---|---|---|
| | No. | % | (N=) |
| | | | |
| Sole residence | 5 | 14 | (36) |
| Shared residence | 0 | 0 | (10) |
| | | | |
| Parental responsibility order | 61 | 59 | (103) |
| | | | |
| Specific Issues Order | 4 | 29 | (14) |
| | | | |
| Prohibited Steps Order | 11 | 55 | (20) |
| | | | |
| Penal notice | 6 | 43 | (14) |

## Outcomes of contact applications and the initial position of the resident parent respondent

The data presented in earlier sections indicates that half the non-resident parent applicants could have had some grounds for dissatisfaction with the outcome of the court proceedings in that they did not achieve everything they had sought at the outset in the way of contact. What about the other party to the proceedings, the resident parent?

As we found with non-resident parents the position of the resident parent at the start of the proceedings was not always apparent. Court forms were not always returned or the section asking for their response to the application left blank. Early statements or welfare reports were often not available. However in 177 of the cases brought by non-resident parents (61% of 289) there was evidence that the resident parent respondent was either opposed to any face to face contact (108); wanted contact to be supervised (40) or objected to staying contact (29).

As can be seen from table 3.15 in over 80% of the cases where the resident parent respondent was initially opposing either any direct contact or unsupervised contact (122 of 148) they had raised serious welfare concerns as an issue. Where only staying contact was in dispute the proportion was considerably lower but still not insubstantial (11 of 29; 38%) while in a further six cases there were alleged to have been serious welfare issues in the past, which may well have contributed to the resident parent's resistance to staying contact. Where the issues appeared to be narrower only one in five resident parent respondents raised serious welfare concerns about contact though again it is notable that when one adds in the cases where there had been such concerns in the past the proportion rises to more than a third.

### Table 3.15: The initial position of the resident parent respondent by prevalence of welfare allegations/concerns

| | Serious welfare concerns | | | | |
|---|---|---|---|---|---|
| | Issue in case | | Issue in case or background | | |
| Position of resident parent respondent | No. | % | No. | % | (N=) |
| Opposed to any direct contact | 89 | 82 | 93 | 86 | (108) |
| Opposed to unsupervised contact | 33 | 83 | 34 | 85 | (40) |
| Opposed staying contact | 11 | 38 | 17 | 59 | (29) |
| Any of these | 133 | 75 | 144 | 81 | (177) |
| None of these | 24 | 21 | 40 | 36 | (112) |
| All resident parent respondents | 157 | 54 | 184 | 64 | (289) |

As reported in chapter 2 in relation to all cases, there was a statistically significant association between the initial position of the resident parent respondent and the contact the court would have expected to take place as a result of the legal disposal of the case. Even so, as table 3.16 demonstrates, resident parents who opposed an application for either face to face, unsupervised or staying contact were more likely to fail to prevent this than succeed. Thus of the completed cases where the outcome was relevant and known:

- Of the 99 resident parents initially opposed to face to face contact only 44 were successful (a 56% failure rate). Indeed 30 ended up with staying contact.

- 36 resident parents had initially opposed unsupervised contact. In 26 of these cases the final outcome was for unsupervised contact, with at least 15 including staying contact (a 72% failure rate).

- In 28 cases the resident parent's objections were restricted to staying contact. Only 11 were successful (a 61% failure rate).

**Table 3.16: Outcomes by the initial position of the resident parent respondent (N=266)**

| | Form of contact initially opposed by resident parent respondent | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | Face to face | | Unsupervised | | Staying | | None of these | |
| | No. | % | No. | % | No. | % | No. | % |
| *Face to face contact* | *55* | *56* | *31* | *86* | *28* | *100* | *93* | *90* |
| Staying | 30 | 30 | 15 | 42 | 17 | 61 | 64 | 62 |
| Unsupervised visiting | 21 | 21 | 10 | 28 | 9 | 32 | 18 | 18 |
| Supervised visiting | 1 | 1 | 5 | 14 | 1 | 4 | 2 | 2 |
| Face to face, form unknown/as child wanted | 3 | 3 | 1 | 3 | 1 | 4 | 9 | 9 |
| | | | | | | | | |
| *No face to face contact* | *44* | *44* | *5* | *14* | *0* | *0* | *10* | *10* |
| Indirect | 16 | 16 | 2 | 6 | 0 | 0 | 3 | 3 |
| No contact | 27 | 27 | 3 | 8 | 0 | 0 | 7 | 7 |
| No face to face, not known if indirect. | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| | | | | | | | | |
| (N=) | (99) | 100 | (36) | 100 | (28) | 100 | (103) | 100 |

In total 98 resident parents did not succeed in their opposition on these major issues, a 'failure rate' of 60% (n= 163). This is much higher than the proportion of non-resident parent applicants who were 'disappointed' for any reason (49%) and almost twice as high as the proportion who failed to achieve their objectives in terms of getting face to face, unsupervised or staying contact (85 of 269; 32%).

Although the proportion of 'disappointed' resident parent respondents varied across the courts, from 39% to 100%, in all but two courts it reached half or more. There was little difference by court level. Resident fathers were more likely to fail than resident mothers (82% compared with 59%) were although the difference was not statistically significant.

**Table 3.17: Serious welfare issues raised in cases opposed by the resident parent**

| | Form of contact initially opposed by resident parent | | | | | |
|---|---|---|---|---|---|---|
| | Face to face | | Unsupervised | | Face to face, unsupervised or staying | |
| Serious welfare issue | Failure rate | | Failure rate | | Failure rate | |
| | % | (N=) | % | (N=) | % | (N=) |
| *Domestic violence** | | | | | | |
| Yes | 45* | (51) | 61 | (18) | 51* | (73) |
| No | 67 | (48) | 83 | (18) | 69 | (89) |
| | | | | | | |
| *Child abuse or neglect* | | | | | | |
| Yes | 50 | (40) | 75 | (12) | 59 | (56) |
| No | 59 | (59) | 71 | (24) | 61 | (106) |
| | | | | | | |
| *Drug abuse* | | | | | | |
| Yes | 42 | (33) | 67 | (15) | 51 | (53) |
| No | 62 | (66) | 76 | (21) | 65 | (109) |
| | | | | | | |
| *Alcohol abuse* | | | | | | |
| Yes | 51 | (37) | 86 | (7) | 59 | (49) |
| No | 58 | (62) | 69 | (29) | 61 | (113) |
| | | | | | | |
| *Mental health concerns* | | | | | | |
| Yes | 67 | (24) | 80 | (5) | 72 | (32) |
| No | 52 | (75) | 71 | (31) | 58 | (130) |
| | | | | | | |
| *Fear of abduction* | | | | | | |
| Yes | 67 | (18) | 91 | (11) | 77 | (30) |
| No | 53 | (81) | 64 | (25) | 57 | (132) |
| | | | | | | |
| *Any of these* | | | | | | |
| Yes | 53 | (80) | 67 | (30) | 58 | (121) |
| No | 68 | (19) | 100 | (6) | 68 | (41) |
| | | | | | | |
| *Multiple concerns* | | | | | | |
| More than one concern | 52 | (62) | 70 | (20) | 58 | (88) |
| One only | 56 | (18) | 60 | (10) | 56 | (33) |
| No concerns | 68 | (19) | 100 | (6) | 68 | (41) |

N=162 * indicates a statistically significant difference

In cases where any serious welfare issues were raised resident parent respondents were more likely to be successful than in cases where they were not (43% compared to 31%, although this did not prove to be statistically significant, even in the cases where face to face or unsupervised contact was opposed. Analysis of outcomes according to each type of welfare concern (table 3.14) shows that in most (but not all) instances resident parents were more likely to 'succeed' where the concern was raised, but the only one in which the difference proved statistically significant was domestic violence ($p<.05$).

Nonetheless, even where serious concerns were raised the only circumstances in which resident parents were more likely to succeed than to fail were where they were opposing any face to face contact because of alleged domestic violence (55% success rate) or drug abuse (58% success rate).

## Summary

Most applicants who were seeking to establish/restore face to face contact where this was not happening at the point the proceedings were brought succeeded (70%; 129 of 184). Indeed 37% achieved staying contact. There was a statistically significant association between whether direct contact was achieved and the interval since the child was last seen; whether the principle of contact was in dispute; and whether the resident parent had raised concerns about serious welfare issues.

Where face to face contact was to take place, applicants who sought overnight stays were mainly successful (78%; 110 of 142). Two factors had a statistically significant association with whether there was to be staying or only visiting contact: the initial position of the resident parent and whether the child had been seen in the three months prior to the proceedings.

Two-thirds of applicants who sought only visiting contact, or did not specify whether they wanted visiting or staying, achieved face to face contact (65 of 99; 66%) and 18% achieved staying contact. Where there was to be visiting contact, almost all those who wanted this on an unsupervised basis succeeded (60; 94% of 64).

Data on the frequency and quantum of contact sought and obtained was not always available.

Of those who sought and secured *staying* contact, only a minority clearly failed to achieve their objectives:

- 67% (41 of the 62 where information was available) achieved the frequency they had asked for, or more (7). Unsuccessful applicants were typically those who had sought contact on at least a weekly basis, who ended up with fortnightly or less.
- 67% (26 of 39) obtained the length of stay they had sought, or more (7)
- 64% (37 of 58) got the number of nights per fortnight they sought, or more (14).
- 79% (19 of 24) succeeded in obtaining additional visiting contact.
- 73% (11 of 15) got at least as many hours contact time as they had asked for or more (7).
- In total, there were 35 cases (31% of 110) in which there was evidence that applicants who sought and obtained staying contact did not achieve everything they had originally asked for in term of frequency, quantum or additional visiting.

Success rates for those who sought and obtained visiting contact were poorer:

- 7 (of 12 where data was available) got less *frequent* visits than they had sought, none got more;
- 4 (of 6) got shorter sessions than they had sought, with only one person getting more.
- In total it was known that eight applicants (of 12) did not achieve what they wanted in terms of quantum. While this works out at only 13% (8 of 61) of all

those who sought and obtained unsupervised visiting contact the small number of cases for which this data was available means the proportion could be much higher.

Data was available on 26 of the 29 completed cases in which the non-resident parent was seeking to enforce an existing order or agreement. Of these:

- 8 applicants were entirely successful, getting the terms of the original order or agreement reinstated or improved on, and, where sought (2), obtaining a penal notice'
- 4 got the order confirmed but did not manage to get a penal notice attached;
- 14 did not succeed in any respect.

Overall, in half of the completed relevant cases[10] in which non-resident parents had come to court to achieve some form of face to face contact (128 of 269; 48%) there was evidence that the outcome fell short in some respect of what the applicant had originally sought. Thus:

- 85 (32%) did not obtain the type of contact they had initially sought:
  - 56 failed to achieve face to face contact;
  - 25 got face to face contact but only in the form of visiting contact rather than the staying contact they had sought (including five with supervised contact);
  - 4 achieved their objectives in that they got face to face contact but had to accept that contact would be supervised.
- 43 achieved the type of contact sought but not the quantum desired:
  - 8 were successful in obtaining visiting contact but did not achieve what they had hoped for in terms of frequency or duration;
  - 35 were successful in getting staying contact but did not achieve what they had hoped for in terms of frequency, duration, or visiting in addition to staying.

In addition, there were four cases in which the applicant did not obtain a penal notice although in other respects they were successful.

The position of the resident parent at the start of the proceedings was not always apparent. Where data was available, however, it showed that resident parents who initially opposed either face to face, unsupervised or staying contact were more likely to fail to prevent this than succeed (60%; 98 of 163). Fifty-six per cent of those who opposed face to face contact failed (55 of 99) as did 72% of those who opposed unsupervised contact (26 of 36) and 61% (17 of 28) staying contact. Thus the resident parent's failure rate in these respects was almost twice that of non-resident parents who did not achieve the **type** of contact they had initially sought (32% of 269) and higher than the proportion of non-resident parents who did not achieve *everything* they sought (49%).

Where resident parents raised serious welfare issues they were more likely to be successful. However the only concern which made a statistically significant difference was domestic violence and the only circumstances in which the resident parent's opposition was more likely to succeed than fail was where concerns were raised about domestic violence (55%) or drug abuse (58%).

[10] Excluding cases where the proceedings were ongoing, the outcome was not known, the parents had reconciled, one parent had died or residence had changed).

# Chapter 4: Cases where the outcome expected by the court as the result of the proceedings was no contact at all

Chapter 2 of this report outlined the outcomes of the court proceedings and chapter 3 compared those with what non-resident parent applicants were seeking at the point the application was made and the initial position of the resident parent. In the next few chapters we look at how and why each of the various outcomes were reached and in particular, those arrangements which fell short of what non-resident parent applicants were originally seeking, starting with the one with which they all would, by definition, have been disappointed, where the expected outcome of the legal disposal of the case was that there would be no contact at all. As noted in chapter 2, 39 cases fell into this group, representing 15% of all completed relevant cases.

It is very important to note that by 'legal disposal' we do not mean only those cases where the court made an order that there should be no contact or dismissed the application. As we shall see this was in fact rare. In the vast majority of cases ending with no contact the non-resident parent either formally withdrew or effectively abandoned the application.

That finding very much reflects the views expressed in our interviews with practitioners, many of whom expressed surprise, and dismay, at the proportion of our sample cases ending with no contact which, on the face of it, seemed at odds with their own experience:

> *I've never done that (ordered no contact)* (Judge)
>
> *The orders for no contact are so few and far between.* (Legal advisor to the FPC)
>
> *I can't personally remember the last time I sat on a case where we ordered no contact.* (Magistrate)
>
> *When Fathers for Justice were making a lot of noise I remember going through my memories of where I had said there should be no contact and the courts went along with it. There were only three in the whole 12/13 years.* (Cafcass officer).

Later in this chapter we explore why so many applicants did not pursue their applications. Before doing so we describe the characteristics of cases which ended with no contact.

## Profile of the cases ending in no contact (39)

Just over half the cases in this group concerned a single child (22; 56%) with only five cases involving more than two (Appendix table 1). By the end of the proceedings two-fifths of the index children were still under five years old (table 2.13, chapter 2) while almost a third (31%) were 10 and above.

In all but one case the non-resident parents were fathers, who were three times more likely to finish up with no contact than non-resident mothers (38 of 261; 15%; compared with 1 of 21, 5%), although the difference was not statistically significant.

Most cases (37) were brought by the non-resident parent, four of whom were only originally seeking indirect contact, with a further three asking for supervised contact. All the others wanted unsupervised contact, including 10 who were applying for staying contact. Four applicants already had orders for face to face contact, which they were seeking to enforce and one an order for indirect contact, which he was seeking to vary. Two applications were made by the resident parent. In one the application was to prevent the non-resident father bringing the children into contact with their paternal grandparents, who were alleged to have abused them. In the second the resident mother sought to regularise contact, which had been erratic and prevent the father coming to the home.

In the majority of these cases (36 of 39) there was no contact at all at the point the application was brought[11] and while in most (27) there had been some contact since the parental relationship ended, in at least 17 more than six months had elapsed since the child was last seen, of which 13 had gaps of more than a year and five of more than two years.

In most cases, from the start of the case the resident parent was known to be opposed to any contact (27 of 39; 69%). Three were willing for there to be face to face contact but wanted conditions imposed on the non-resident parent's contact, typically some form of monitoring, while, as noted above, in one the conditions sought related to contact by grandparents. In a further six cases it was the index child who was said to be opposed to contact[12]. There was only one case in which none of these applied and one in which the resident parent's position at the outset was not known.

**Table 4.1: Allegations and concerns in cases ending in no contact**

| | Contact opposed/conditions sought | | All no contact cases | |
|---|---|---|---|---|
| Allegations and concerns | No. | % | No. | % |
| Domestic violence | 22 | 73 | 27 | 69 |
| Child protection issue | 11 | 37 | 13 | 33 |
| Drug abuse | 16 | 53 | 16 | 41 |
| Alcohol abuse | 12 | 40 | 14 | 36 |
| Mental health | 4 | 13 | 5 | 13 |
| Abduction | 5 | 17 | 6 | 18 |
| *Any of these* | *26* | *87* | *33* | *85* |
| | | | | |
| Multiple concerns | 21 | 70 | 24 | 62 |
| Minimum | 0 | | 0 | |
| Maximum | 5 | | 5 | |
| Mean number of concerns | 2.3 | | 2.1 | |
| | | | | |
| (N=) | (30) | | (39) | |

The reasons resident parents put forward for opposing contact, or for wanting conditions imposed were, on the face of it, serious, with 87% involving allegations or concerns about domestic violence, child protection, drug or alcohol abuse, mental

[11] In one of the three cases where there was direct contact this was supervised, the other two were unsupervised.
[12] In total 19 of the index children were said to be resistant to contact.

health or fears of abduction. Across the whole group of cases in which the outcome was no contact, this proportion was only slightly lower (33; 85%). Moreover, many cases involved multiple concerns, the average overall being just over two, but with some cases recording concerns in up to five of the categories listed (table 4.1).

Typically, therefore, the non-resident parent was facing an uphill struggle from the start. This probably helps to explain one of the most immediately striking features of these cases – the large number of contact parents who did not persist (33; 85%; table 4.2). Only four applications were dismissed after a contested hearing. Almost half, however, were formally withdrawn, and nearly two-fifths appear to have been effectively abandoned. Two further cases were dismissed because the applicant failed to appear for the final hearing or instruct a solicitor to appear on their behalf and although it subsequently emerged that this may not have reflected a decision to opt out of proceedings at that point no attempt was made to reinstate the application.

### Table 4.2: How decisions were reached in no contact cases by legal disposal

| | Legal disposal | | | | | |
|---|---|---|---|---|---|---|
| | Withdrawn | Order of no order | Dismissed | No contact order | All disposals | |
| *The process* | % | % | % | % | No. | % |
| Withdrawn | 72 | 22 | 6 | 0 | 18 | 46 |
| Effectively abandoned | 0 | 13 | 87 | 0 | 15 | 39 |
| Dismissed after contested hearing | 0 | 0 | 100 | 0 | 4 | 10 |
| Dismissed due to applicant non-attendance on the day | 0 | 0 | 50 | 50 | 2 | 5 |

N=39

Nonetheless, many applicants pursued their goal for a considerable period of time. On average the cases ending in no contact lasted for 12 months. The longest cases were those which were formally withdrawn but in three of the four groups there were cases which lasted for more than a year, the longest case (which was eventually withdrawn), going on for almost three years (table 4.3).

### Table 4.3: Duration of cases ending in no contact

| Months to completion | Contested | Withdrawn | Abandoned | Other | All | |
|---|---|---|---|---|---|---|
| | % | % | % | % | No. | % |
| Up to 3 | 0 | 11 | 20 | 0 | 5 | 13 |
| 4-6 | 0 | 22 | 20 | 100 | 9 | 23 |
| 7-12 | 75 | 22 | 33 | 0 | 12 | 31 |
| 13-18 | 25 | 11 | 7 | 0 | 4 | 10 |
| 19-24 | 0 | 22 | 20 | 0 | 7 | 18 |
| More than 24 | 0 | 11 | 0 | 0 | 2 | 5 |
| (N=) | (4) | (18) | (15) | (2) | (39) | |
| | | | | | | |
| *Minimum* | *10* | *1* | *3* | *6* | *1* | |
| *Maximum* | *16* | *32* | *24* | *6* | *32* | |
| *Mean* | *12* | *14* | *10* | *6* | *12* | |

N=39

### Welfare reports and expert evidence

Welfare reports were ordered in almost all cases (33; 85%)[13], typically from Cafcass, although in two cases from Social Services[14]. The lowest proportion (73%) was in cases which were effectively abandoned. Fourteen cases had at least one addendum report, in one of which the court also ordered a report from Social Services before making the child a party and appointing a guardian ad litem. One other child was also eventually separately represented.

Evidence from other professionals was fairly unusual (7 cases), with one case involving hair tests for drug use, the rest mainly reports from mental health/health professionals. Six cases involved police evidence about domestic abuse.

Only six cases did not have any professional evidence ordered, an indication of the level of concern in many cases.

### Was face to face contact ever established during proceedings?

This was fairly unusual. However there were 13 cases where direct contact was set up and a further two where this was agreed or ordered but the contact parent did not take it up. Interestingly, there were no cases where interim contact was ordered or agreed but either the resident parent or child refused.

Typically interim contact was initially organised on a supervised basis, often at a contact centre, and six did not progress beyond this. However there were four which did so, two of which actually moved on to staying contact before foundering and two which started unsupervised before breaking down.

The remaining case involved a single, disastrous, meeting between a father and the children he had not seen for five years, after which the father withdrew. There was no Cafcass involvement in this case and we did wonder whether, had the father been better prepared (he turned up with lots of relatives and completely overwhelmed the children), or work had been done subsequently with the family, a more satisfactory outcome might have been achieved.

## Why did non-resident parents not pursue their applications?

### Cases with welfare reports/expert evidence

It might have been expected, given the high proportion of cases in which welfare reports were ordered, that many of the decisions not to pursue an application to the point of a contested final court hearing might have been directly related to an adverse report, particularly since, as some of our solicitor interviewees told us, legal aid for a contested hearing is likely to be difficult to obtain in such circumstances. There were only six instances, however, of the 33 where there was a welfare report or expert evidence, where withdrawal appeared to be linked to an adverse recommendation.

---

[13] In one case the court made use of a report prepared on the non-resident parent in contact proceedings concerning his new partner's children.

[14] In one of these cases the father had committed sexual offences against children as a juvenile and the child had been on the child protection register because of suspected non-accidental injury. In the other two previous children had been removed because of abuse by the father and there was a long history of severe domestic violence prior to the parental separation.

In the remaining (21) cases:

- 2 applicants withdrew before the officer had started work.
- 6 dropped out before the report was submitted. While it is conceivable that the attitude of the officer to the application may have had an effect, we think this probably only applied to one case (where the Cafcass officer referred the case to Social Services after discovering father was having a sexual relationship with an underage girl). Of the rest, four applicants simply failed to co-operate with the enquiry process and one decided to withdraw after he discovered he was not going to be released from prison as early as he had hoped.
- 4 only desisted after adverse reports from other professionals, or, in one case, having conceded at a finding of fact hearing on domestic violence.
- 1 continued to pursue the application for some time despite an adverse report but failed to turn up for the final hearing.
- 8 did not pursue their applications even though the report was positive.

In one of these last eight cases the father withdrew after visiting contact, which had been resumed, broke down for reasons which were not recorded. The remaining seven fall into two groups.

In the first (4 cases) the contact parent did not take up or continue with the interim contact which had been agreed/ordered. It is true that the type of contact on offer was not always what they had sought at the outset (supervised, for instance, or indirect) but the case was at least, at that point, going in the desired direction. However as many of the solicitors we interviewed told us, some non-resident parents can find it extremely difficult to accept the court's incremental approach:

> *I've had several cases where fathers have walked away from contact because contact couldn't be on their terms. Particularly where a guardian ad litem has felt that it's appropriate to supervise contact at least in the initial stages. The father has simply found that unacceptable.*
>
> *It's my way or the highway. There's a lot of cutting my nose off to spite my face.*

In the second group, which were all quite lengthy cases, the non-resident parent seemed to have come to the conclusion that the contact was never going to work out. Again this chimed with the experience of our practitioner interviewees:

> *Occasionally you get a non-resident parent who throws in the towel because the other parent has made it so difficult for them. They just can't go through it themselves and also the one or two I've had, they don't want to put their children through anymore.* (Solicitor)

## Cases without welfare reports/expert evidence

There were only six cases where the contact parent withdrew/abandoned the attempt to get contact and there was no expert evidence of any kind. Typically these cases

were very short, only one lasting for more than seven months and three involved parents who simply did not turn up to court. One was abandoned when it became clear that the resident mother had left the country before the application was even lodged. One was the case mentioned earlier where the parent withdrew after the first meeting with his children for several years went badly wrong. In the final case, which lasted for 24 months, the father eventually succeeded in getting contact at a contact centre but then stopped coming to court, for reasons which were never established.

Whether or not a welfare report was ordered, one of the striking features of these cases was the proportion of would be contact parents (at least 15 in our judgement) whose behaviour seemed ill advised: not turning up to court, refusing to see the Cafcass officer, not instructing their solicitor, not taking up contact which was on offer and in one case getting banned from a contact centre because of aggressive behaviour. Whether the outcome would have been different if they had done everything expected of them, of course, cannot be known.

## The issues in cases which went to a contested final hearing

As noted earlier, only four cases went to a contested final hearing. In fact two of these consisted only of an application to adjourn, in one case to give the non-resident father another opportunity to show his commitment to indirect contact (which he had already failed to maintain); in the other for the father to reapply for legal aid, which had been withdrawn following an adverse welfare report. Both applications were refused.

The two cases in which the substantive issues were contested, which were decided in the family proceedings courts, both involved resident mothers who were totally opposed to contact because of the father's violence and drug abuse.

Case 114. The parents separated when the child was 6 months old. Proceedings started 10 months later, contact having been persistently denied. Mother's position was that father had '*disqualified himself from responsible parenthood*'. Father admitted some violence during the relationship – indeed since he had one conviction for assault and a prison sentence for breach of a community rehabilitation order and there had been two non-molestation orders it would have been hard for him to do otherwise. However he had been found not guilty of a more recent alleged assault. While admitting using illegal drugs he claimed to be only a recreational user. The Cafcass officer was clearly very concerned at the litany of abuse and harassment mother described:

> *'If only half of what mother has said about father is true it would be a sorry tale of continuous persecution and would be a powerful argument against the imposition of a contact arrangement which might conceivably place the child at some risk of harm were father's demeanour to change suddenly as is feared by mother. Even if father's version is to be believed, considerable thought is needed as to what kind of arrangements could be set up to ensure the child's safety'.*

Mother applied for father's application to be dismissed. The court considered there was insufficient evidence to do so and listed a finding of fact hearing, at which the issues were narrowed down to the assault on which father had been acquitted in the criminal proceedings. The family court, in contrast, found in favour of mother. Father, however, still wanted to pursue contact and a further welfare report was

ordered which recommended a hair test, since father was now claiming to be drug-free. The analysis indicated he was a medium to heavy user of amphetamines.

The contact application was dismissed. In their reasons, which cited the Re L guidelines[15], the magistrates expressed concern at father's attitude to the domestic violence findings and his dishonesty about his drug use, concluding that he did not recognise the impact of his behaviour on the mother and the child and that before there could be contact he had to demonstrate that he had changed.

These proceedings lasted for 16 months.

Case 103. There had been no contact since the parents separated when the child, now 3, was 21 months old. At the point he made the application father had been in prison for two years and was therefore only initially applying for indirect contact, moving to direct on his release on licence, which took place two months into the proceedings, which lasted for 10 months.

Mother opposed any contact, citing physical and emotional abuse throughout the relationship, father's heroin addiction and his long history of offending, involving several custodial sentences which meant that he had actually spent very little time with the child, who had no attachment to him. She was also concerned about the effect on the child of starting to build up a relationship which might then be disrupted if father was again incarcerated or under the influence of drugs. Prior to father's most recent conviction the child had been on the Child Protection Register because of Social Services concerns about domestic violence and unexplained injuries to the child.

The court ordered a welfare report which emphasised the strength of mother's feelings about father having contact, the likely impact on her ability to care for the child if contact was ordered against her will, Social Services' concerns about unsupervised contact and the child's lack of attachment. While not coming down against contact it concluded that before ordering contact the court would need a risk assessment.

By the time of the final hearing father was once again in prison and the court dismissed the application on the grounds that to pursue a risk assessment would unduly prolong proceedings which it considered had already been significantly delayed by father's conduct; there was no reason to believe father would cooperate given his record to date (which included breaches of parole and non-molestation orders); and that the child had no relationship with her father and to introduce him at this point could be detrimental.

## Adverse professional opinion

Fourteen of the 39 cases which ended with no contact (36%) had an adverse report from a professional. Eight of these were primarily based on the children's persistent refusal to have contact; all but one in the context of their memories of domestic violence against the resident parent.

Case 417. This was the second set of proceedings. There were two children, the index child (aged 10) and his sister, aged 6. The parents had separated two years before after a relationship which appears to have been characterised by physical violence, threats and intimidation, resulting in a non-molestation order, a conviction

[15] Re L, V, M and H (Contact: Domestic Violence); [2000] 2 FLR 334

for threatening behaviour, and police referrals to Social Services. The children witnessed the violence and on more than one occasion the index child was injured when he tried to protect his mother. He also made allegations of physical abuse.

On separation mother offered supervised contact. Father refused and went to court. Although there was one serious incident in the course of these proceedings, during which both the mother and index child were attacked and father threatened to abduct the children, the father subsequently apologised and mother decided to give him another chance. Contact then went reasonably well and proceedings ended with parents agreeing unsupervised visiting contact. There was no welfare report or findings of fact on the domestic violence allegations.

Contact almost immediately ran into difficulties, with incidents of verbal abuse and harassment. Mother stopped the visiting contact after the index child reported he had been hit and his behaviour deteriorated. She then supervised contact for a while in the family home until father took the case back to court, asking not only for unsupervised but staying contact.

At the first hearing in the sample proceedings the parents agreed that interim contact could take place away from the home but would be supervised by mother. The Cafcass officer appointed to report was so concerned at the children's reports of contact and its impact on them that she[16] asked for an early hearing, reporting that the children were expressing a clear wish not to see their father and had disclosed further incidents of abuse in the past. She recommended a finding of fact hearing and argued that if the allegations were found to be substantiated there should only be indirect contact in the immediate future aimed at father acknowledging and making reparation for his behaviour and there should be no assumption that this would move onto direct contact.

Mother suspended contact; the court refused father's application for contact to be supervised at a contact centre and ordered a finding of fact hearing.

That hearing was very short. Father submitted a statement admitting to most of the allegations of violence (the list ran to two pages). In addition to evidence of domestic violence mother also submitted a report from a counsellor seeing the children which linked the index child's behaviour to his experiences.

A psychologist was appointed to carry out a psychological assessment of father. She recommended therapeutic input with father and contact supervised at a contact centre. What happened then was not entirely clear. The court requested information about the contact centre and father appears to have started work with a mental health counsellor. However contact was not restarted. This may have been linked to an alleged assault by father on another ex-partner after that relationship broke down.

The court made the children parties and appointed a guardian ad litem, who reported that the children were adamant they did not want to see their father; that their views had been consistent for the past 18 months and that proceedings, which were badly affecting them, urgently needed to come to an end:

> *The children are particularly upset by having to see a number of different professionals only to tell them the same thing, that they do not want to have any contact with father, direct or indirect...they tell me they just want to forget about him and get on with their lives'.*

[16] For convenience all Cafcass officers and social workers are referred to as female.

Despite father's allegations that the children were being alienated by their mother she concluded that their views were genuine and the result of their memories of father's behaviour and their '*real fear'* of him. To compel them to have contact, therefore, would cause them distress and could result in emotional damage. Father withdrew his application.

The eighth case also involved a violent parental relationship, although the issue of who was the aggressor was never resolved and this was not the reason for the children's opposition.

Case 410. The two boys, aged 14 and 12, had remained with their father in the family home after mother left, because of domestic violence according to her, because of an affair according to father. Contact had been problematic, the boys becoming increasingly negative and verbally aggressive to mother and then refusing to see her or speak to her.

Mother brought an application for residence and, if that failed, contact, alleging father had turned the children against her and she was concerned for their mental health. Father, who was opposing residence, said he had no objection to contact but the boys were adamant they did not wish to see their mother and at their age he could not force them to.

After in-court conciliation at the first hearing the parents agreed to try mediation. This having failed a welfare report was ordered. The Cafcass officer concluded that the boys' feelings were genuine, arising out of their hurt at mother's behaviour, but that father was not encouraging them to have a more positive attitude. She too was concerned about the boys' emotional well being. However, although she considered it was in the children's long term interests to see their mother it would be counter-productive to force it at this stage. A consent order for indirect contact was made in line with the welfare report's conclusion that, regrettably, this was the only feasible way forward at this point. Proceedings then continued for another year with a series of adjournments for the index child to receive counselling. The counsellor then wrote to the court:

> *The child has stated adamantly and consistently that he does not want to see his mother. He says he feels at war and that his anger is not caused by lack of contact but a direct result of mother's insistence that contact be resumed. This is exacerbated by his belief that the court will fail to take his wishes into consideration. I am concerned at the impact these experiences are having on the child's emotional well being. I share his concern that he will not be listened to and will therefore continue to display increasingly angry behaviour.*

Mother withdrew.

All six of the remaining cases with an adverse professional report which were not primarily based on the child's objections involved serious welfare concerns.

Case 330. The parents had been separated for $3^{1/2}$ years; the child was now 3. Prior to his birth two children had been removed and placed for adoption because of concerns about the unstable and violent parental relationship. Faced with the prospect of possibly losing the sample child too, mother ended the relationship during her pregnancy, in the course of which she alleged she was again subjected to severe violence. There was then no contact, on the advice of Social Services, until the child was 2, when some unsupervised contact restarted. This then stopped, in mother's

version after father turned up at the hospital where she had just given birth to another child, not his, and there was a row; in father's words because he had asked for overnight contact. Father went to court.

At the first hearing mother agreed that contact should resume. This foundered after 4 months, when it was alleged that father had twice left the child unattended and was physically and verbally abusive to him, including in the presence of mother and others, to the point that the child had become frightened to go with him.

The court ordered a welfare report which supported mother's position, concluding that '*all the indications are that father is not a person fit to act in the role of a parent'*. Social Services also took the view that father presented too great a risk, that they could have no confidence that contact arrangements could be satisfactorily managed on a long-term basis and that the child was '*likely to suffer significant emotional damage greater than that caused by an absent father*'. Indeed a child protection investigation was underway in relation to the children currently living with him. The court also had a statement by a recent ex-partner of father expressing concern about the risk he presented based on her own experiences of his violence to her and her child, resulting in a conviction for harassment and a restraining order. Father withdrew his application shortly before the listed final hearing.

## Could the outcome or the process be seen as unfair to the non-resident parent?

As we described at the beginning of this report, this research was commissioned to provide detailed factual information about the outcomes of contact applications and the processes by which they were reached. Most of the report is devoted to documenting this. At the same time it is impossible to ignore the context in which the government's commitment to commission the study was made: claims by members of the parliamentary opposition and certain pressure groups that non-resident parents were ending up with little or no contact for no good reason. We therefore considered it incumbent on us to examine the data and consider whether it provided any support for those claims.

The interview material provided further impetus. As we report in chapter 10, there was a general consensus that the courts and associated professionals all operated on a de facto, although not statutory, presumption that there should be contact unless there was good reason to the contrary and courts were typically seen as '*bending over backwards*' to try to achieve this wherever possible. Nonetheless there was a recognition that the courts were not always able to deliver on this objective in that there were some cases where the outcome was no contact even though there was nothing in the non-resident parent's behaviour or care which would, objectively, appear to warrant this. These quotes, from Cafcass officers in different areas, are typical:

> *There are cases that break my heart where I know that a perfectly lovely dad hasn't got contact.*
>
> *I often feel sorry for dads. There are some lovely dads, who really have so much to give the children, and the children love them, but the resident parent just has so much power and it is difficult to negotiate.*

> *It's really sad, I've come across some fathers where you just want to weep because they're really genuinely good blokes, they're going to have a good input into the children's lives, but…*

We therefore examined the 39 cases which ended with no contact to see how many fell into this category, not necessarily of 'lovely dads' but those where a) there was no evidence of welfare concerns of sufficient severity to rule out contact and b) where the non-resident parent had co-operated with the court process and therefore the outcome might be seen as 'unfair' to that parent. We are very aware that this is necessarily a subjective assessment and our information, based only on the file data and in some cases court transcripts, limited. In many cases, however, the judgement was easy to make: either because there was evidence of major risk to the child or the non-resident parent had refused even a basic level of co-operation with the process. Where there was any room for doubt a case was included as one in which the outcome might possibly be regarded as unfair.

Using that approach we found at most five cases, all involving withdrawn applications. As noted earlier there were only two cases in which the outcome was determined by the court after a contested hearing (cases 114 and 103 described in a previous section) and in neither, in our view, could it be claimed that the outcome was unwarranted.

Two of the five cases in which we think it could at least be argued that the outcome was unfair to the non-resident parent turned on the opposition of older children. One of these, which concerned a non-resident mother and boys aged 12 and 14, has already been described (case 410). The other, with a non-resident father, is set out below.

Case 902. The index child was 11. Her parents had separated when she was 5. Staying contact had been taking place under the terms of a court order for 5 years until mother stopped it because, she claimed, of the child's increasing distress at father's treatment of her which amounted to emotional abuse. Father went back to court almost immediately to seek enforcement of the order, to extend the period of staying contact and to include a younger sibling, born just after the separation, in the order.

At the first hearing proceedings were adjourned for mediation to take place. This appeared to be initially successful in getting contact restarted but soon broke down. The court ordered a welfare report. This went into great detail about the child's ambivalent feelings about her father, her distress at not seeing him but also her unhappiness at the way he treated her:

> *She says she feels she almost doesn't have a dad any more. She would like a warm and loving relationship with him but she fears he does not understand how she feels. 'Dad doesn't make me feel that I'm somebody'. He bullies and manipulates her and she frequently feels uncomfortable around him. She felt she always had to wear a smile so that father felt good; she could not show her feelings. She had written to him trying to explain but he responded that she was not telling the truth*.

In line with the child's clearly expressed view that she wanted to see her father in a '*safe place where he could not bully her*' the court ordered contact at a contact centre. This went well and four months later visiting contact resumed. The Cafcass officer reported that the parents now appeared to be working together better and

contact was going well. Overnight contact was agreed. Sadly this did not work out and father withdrew his application without explanation, informing the court merely that '*the intervention of the court has been unsuccessful in ensuring regular contact*'.

Children's resistance to contact, what causes it and how that should be addressed emerged as a major theme in our practitioner interviews (see chapter 10). Indeed it was cited as one of the key factors which could lead the court eventually to deny direct contact:

> *One (factor) would be if the child has expressed a repugnance to the non-resident parent. It may be difficult to find out why but it may also be difficult to find out what might be done to overcome that repugnance. But if the evidence were that to compel the child to have contact, in the face of that repugnance, would cause emotional harm to the child that would outweigh any benefit to the child, then the interests of the child would require that there would not be contact.* (Judge).
>
> *Where the child is of an age where they are saying 'I don't want to go and it would just be too traumatic, for whatever reason.* (Cafcass officer).

The two cases cited were very different. In one (case 902), although there were no welfare concerns in the sense of the child being exposed to physical risk, there were clearly issues about the quality of the relationship between the child and her father. Nor was there any indication that her views reflected either her mother's malign influence or a reaction to adult conflict, reasons which are typically advanced to explain children's hostility. In the other (case 410), there was a suspicion that the resident father had influenced the children, was certainly not encouraging their relationship with mother and that the adult conflict had contributed to the boys' resistance. What was common to both cases was that the court and the Cafcass officer tried hard to get contact going; indeed in one case it might be argued that they had tried too hard.

The three other cases in which the outcome might be seen as unfair involved much younger children and resident mothers who, it was suspected, were 'implacably hostile' to contact. The first is probably the most clear-cut.

Case 434. The parents separated when the child, now 5, was a year old. The parents disputed the history but at least some contact, including staying contact, took place for about 3 years. The parents then fell out because of a dispute over the non-resident father allegedly failing to return the child's new trainers and coat, an apparently minor incident which has to be seen however, in the context of considerable dispute over child support. The police were called after father went round to the house to try to see the child and was, allegedly, shouting and banging on the door; the whole incident causing the child, mother said, to be very frightened. Mother stopped contact, subsequently claiming that father had been very unreliable about contact, that he frequently left the child with other people and that the child had been much happier since contact ceased.
The case started in the family proceedings court where little progress was made. Mother did not turn up for a single hearing over nine months, proffering a variety of excuses, which the court did not appear to challenge. It took eight months to get a welfare report, because of the unfortunate illness of the officer concerned. The Cafcass officer was only allowed to see the child once, mother then claiming that he had subsequently become extremely distressed and his behaviour had deteriorated. The officer was surprised at this since the child had not expressed any distress in the

interview, had talked positively about his father and said he would like to see him again, preferably on his own without his new partner and her child, with whom he did not get on.

The case was transferred to the county court on the grounds that there was reasonable suspicion that the child was being alienated from his father and mother's refusal to cooperate with the court process. The case was not listed for two months. Mother did not attend, apparently because her solicitor had failed to inform her of the date.

Eventually, 15 months into proceedings, mother came to court and agreement was reached for contact at a play centre, initially supervised by the maternal grandparents. Contact never progressed beyond this point, however, and seems to have become erratic, for reasons which were disputed. Although the case was supposed to come back for regular reviews, the court effectively seems to have lost control. No date was set for the first review. There were then several aborted hearings several of which were due to the parties or the Cafcass officer being unable to attend because of insufficient notice being given; unexpected illness; and the court sending notice of a hearing to mother's solicitor even though she had informed the court that she was now acting in person. Finally father gave up and wrote to the court withdrawing his application:

> *I feel we have been going round in circles for three years and we are no further on. Contact did resume following the court order but only for three months after which mother withdrew again. I can't help feeling this will have caused more distress to the child than if it had never resumed. Despite letters from the court telling mother she must attend hearings she does not. Following withdrawal of legal aid I am no longer in a position to carry on, I have three other children to support. In a recent telephone conversation with mother she said she had no intention of attending court and she thought it was in the child's best interests if there was no contact. I feel nothing would be gained by pursuing the application other than significant costs. I stress that while I feel this is the only viable option at this point it is a decision I have not taken lightly; maintaining contact with the child has always been one of my main priorities but I feel mother has left me no option*.

Mother, on the other hand, would almost certainly have seen this outcome as vindicating her view that father lacked commitment:

> *I am very annoyed with the system... I have been civil and co-operative with father and the Cafcass officer to ensure that whatever happened the child was happy. Yet it seems I am left with not only a massive bill to settle but a very distressed child whom I fought to protect because I knew this would happen, but all I was ever told even after giving evidence of father's history was that he was the father and he has rights. I believe parents earn the right and just because he is the child's biological father doesn't give him any rights unless he can prove his love, which once again he hasn't. And when it comes to his rights as a father to pay maintenance – he still thinks it is OK for his child to do without – yet what do the courts do to support me on this? The whole court system is wrong and children should not be made to suffer*.

Whatever the merits of the respective positions, one cannot help feeling that the court system failed to get to grips with this case, which was allowed to drift on for far too long. There never seemed to be any sense of urgency and there was too much inefficiency. Whether shorter timetabling and a more robust attitude to mother's

attendance at court would have made a difference might be doubtful, but at least the child would not have been exposed to two years of stress.
The other two cases had rather more grey areas in that the mother's objections to contact were bolstered by serious allegations about the father's behaviour and parenting.

Case 426. The child was 22 months old and his parents, who had been separated for about 5 months, were still very young (father 21, mother 19). There had been some contact but this ceased after an argument in which father assaulted mother. At the start of the case mother was opposing contact on the grounds of domestic violence, father's abuse of alcohol and possibly drugs, and poor care of child. Father admitted the single incident of post-separation violence (for which he had a conviction) but contested everything else. At the first hearing the court ordered a welfare report. This recommended a finding of fact hearing. Mother then contacted father and arranged for contact to resume and at the next hearing an agreed order was made for twice weekly contact. This continued for two months, extending indeed to father having the child every day for a full week while mother started a new job. Mother then stopped contact again, claiming father was not looking after the child properly:

> *He would return with his nappy unchanged, the buggy soaking wet and it was apparent he was not being fed adequately, he was ravenous. I twice noticed bruises to the tops of his legs. His behaviour deteriorated, he would be spitting and swearing and twice he put up his fingers and said 'f... off.*

The next hearing had to be adjourned because mother had to leave early; she did not attend the next three, including one which was listed as a hearing on the contested issues. An agreed order was then made for the Cafcass officer to observe two contact sessions. According to the officer the first went well: '*it was clear the child was relating well to father and enjoyed his company and father was diligent in occupying him and meeting his needs'*. Mother did not bring the child for the second. While acknowledging that she could not comment on the risks of unsupervised contact the welfare report recommended contact should resume but initially only in the absence of father's new partner since she considered this new relationship had been significant in the breakdown of contact.

After a fully contested hearing the court ordered twice weekly contact to resume at the home of paternal grandmother, with some sessions being observed by Cafcass.

No contact took place, mother twice refusing to let father take the child, on the first occasion because father's new partner was in the car, on the second because while father was alone he only had a provisional driving licence. There was then a violent altercation between mother's partner and a relative of father's partner, for which both were charged with assault and, according to a later statement by mother, a campaign of harassment against her. The case was transferred to the county court on the grounds that mother had demonstrated an implacable attitude to contact and sanctions would be needed.

The first hearing in the county court was not for 2 months. The case was then listed for a contested hearing in just under a month's time. This could not go ahead because the Cafcass officer was unable to be present, presumably because of the short notice. A consent order was made for two contacts to be observed by Cafcass, followed, if appropriate, by weekly unsupervised contact. Neither parent's partner was to take part in contact. The case was listed for a review in four months, with the

parties given leave to bring the case back to court and for any such application to be immediately listed before the judge.

The two observed contacts took place and arrangements were made for the next sessions. Only one took place. Parents disputed both why there was no other contact and the circumstances surrounding the one which did take place, which ended with the child arriving home distressed, carrying soiled underwear in a plastic bag, and the police being called. The Cafcass officer reported that although mother was prepared to follow the directions of the court she was not supportive of contact and that it was clear that '*the parties are unable to relate to each other in a way which would lead to the child being able to see his father in a relaxed and non-confrontational manner*' and that therefore '*to attempt to further the contact in the present situation was not in the child's best interests'*.

Father withdrew his application.

It is hard to know where the truth lay in this case. From father's point of view mother was unreasonably hostile; from mother's point of view he was irresponsible. Would the outcome have been any different if the family proceedings court had taken a more robust attitude to mother's attendance, if the county court had timetabled the case earlier; if someone had checked on whether contact was happening (and brought the case back to court immediately when it was not) or even monitored/facilitated the first few handovers? Clearly, however, without substantial work being done on the parental relationship contact was not going to be a satisfactory experience for this child.

In the final case mother's opposition to contact turned on her allegations of domestic violence, allegations which had been dismissed in criminal proceedings but were not tested by a finding of fact hearing in the family court.

Case 609. The child was $2^{1/2}$. The parents had separated 4 months prior to proceedings, following an alleged assault on mother. Father was arrested, mother was placed in a refuge and subsequently accommodated in a town some 70 miles away at an undisclosed address. Two months later the charge against father was dismissed. The parents agreed contact at a contact centre but this never took place. Father then applied to the court for contact, to include overnights. Mother opposed unsupervised contact, alleging that father had been controlling, mentally cruel and sexually abusive to her and was a risk to the child because of his mood swings, unpredictable temper and use of cannabis.

At the first hearing, 2 months later, the court ordered a welfare report. There was no indication on file as to why a finding of fact hearing was not listed. The welfare report took 5 months because of staffing problems in the local Cafcass office. Mother refused to let the Cafcass officer see the child or set up observed contact sessions. The officer concluded there was no independent evidence that the child was at risk, nor was there any reason why he should not see his father but in view of the lapse of time contact should restart at a contact centre. By this point, it was reported, mother had agreed the principle of contact. The court ordered interim contact at a contact centre.
Although this went well father, whose physical disabilities made long journeys painful, had difficulties attending. Mother was reluctant for contact to move away from the centre and in particular to it taking place at father's home, which would also present her with transport problems. In an addendum report the Cafcass officer reported that she would have wanted to recommend contact progressing to unsupervised and then

staying. However father had become increasingly despondent and indicated he was going to withdraw his application. Father did write to the court in those terms. The judge, however, insisted there should be a hearing in view of the favourable welfare report. Father did not turn up. The court made an order of no order.

Father's letter of withdrawal to the court was very critical of the whole process, in particular the delays and the fact the mother was not required to return to the local area after the assault charge was dismissed:

> *After heart-rending consideration I have decided I cannot see any future for my son and I. It would be a real battle to develop a meaningful relationship. I don't believe it would be beneficial for the child to see me and then return to his hate-filled psychotic mother. Also mother has had legal assistance throughout, whereas I have spent a fortune on getting nowhere. This is my first experience of dealing with the courts. If anyone I know finds themselves in this position and asks me for advice I would advise them to cut their losses and not to waste their time and money on the courts, but rather spend it on bereavement therapy. If my child had died or been killed the loss may have been easier to deal with*.

We can only speculate as to whether the outcome in this case would have been different had it been possible to obtain a welfare report more speedily but the delay clearly could not helped. Similarly we wonder whether an early finding of fact hearing would have changed the outcome or an interim report addressing the issue of observed contact might have enabled contact at the contact centre to start earlier.

At the same time the case leaves us with some lingering doubts. The assault charge on father was dismissed but the standard of proof is higher in criminal cases than in civil ones and, as in case 114 described above, the family court can reach different conclusions. Mother's other allegations of domestic abuse and drug abuse do not seem to have been explicitly addressed. Did she move many miles away because, as father alleged, she wanted to sever his relationship with his son or was she genuinely afraid? Was there any truth in mother's portrayal of father, who had five other children by three previous partners, as a man who targeted vulnerable women or conversely, as father alleged, was mother's view of men distorted by her own disturbed childhood? Such questions are impossible to answer on the basis of the information available on file and since the case was heard throughout in the family proceedings court no further details were available from a court transcript. However they indicate that the issues are rarely straightforward.

At various points in our discussion of these cases with outcomes which might be regarded as unfair to the non-resident parent we have highlighted aspects of the court process which might have contributed to those outcomes. The most common factor was proceedings being unnecessarily protracted. This arose from a variety of sources: the length of time to get a Cafcass report; delay in listing cases on transfer from the family proceedings courts; hearings having to be cancelled because insufficient notice had been given or proving abortive because the resident parent repeatedly failed to attend. There were also issues of inequalities of funding: in two of the cases the non-resident parent was not legally aided while the resident parent was. Both these factors also emerged in our practitioner interviews as contributing to the perceptions of non-resident parents that the system worked against them:

Given the preponderance of alleged welfare concerns in cases which ended with no contact, particularly domestic violence, the finding that there were only four finding of fact hearings and little in the way of police or expert or evidence other than from Cafcass might raise questions about the extent to which non-resident parents were

fairly treated. Close analysis, however, indicates that in most instances either the accused parent admitted the allegations, or there was other evidence to support the resident parent's position – such as non-molestation orders, criminal convictions, or even previous children having been removed by Social Services.
Of the nine cases where this did not apply five were principally about the children's reluctance to see their non-resident parent, rather than the allegations *per se,* so that focusing attention on their veracity (which did not seem to be questioned) might not have been productive. In two cases professionals were clearly convinced of the seriousness of the concerns while in a third father disappeared after the welfare officer referred her concerns about his relationship with an underage girl to Social Services. The remaining case was one to which we have previously made reference (case 609) in which mother continued to make allegations of domestic violence even though the father had been cleared of assault in criminal proceedings. As noted earlier, we found it somewhat surprising that a finding of fact hearing was not held in this case. However since in this instance clearly the court and Cafcass were proceeding on the assumption that the allegations were unfounded it cannot be said that the absence of such a hearing meant that the process was prejudicial to the non-resident parent.

## Enforcement

Four of the cases which ended with no contact at all started off as applications to give effect to orders made in previous proceedings. In each the non-resident parent either withdrew or abandoned the application. Two of these cases have been described earlier (417 and 902). All involved children who were said to be resistant to contact[17]. In two cases the children were separately represented, one by a solicitor and guardian, the other (case 354 below) by a solicitor only.

Case 354. The child was 13. Her parents had separated 12 years earlier and at some unspecified point a contact order or agreement was made, although no details were available on file. The parents' relationship appears to have been quite fraught. Mother described father as controlling, violent towards her before and after separation and using threatening language and behaviour in front of the child. Father said mother instigated disputes due to her unpredictable behaviour and controlling nature. Nonetheless contact had continued for years, and for the past two had been on the basis of staying contact every weekend, from Friday evening to Sunday.

This broke down when the mother, at the request of the child and in her presence, asked if she could miss the following Saturday. A row ensued, threats were made, the police were called. Father turned up at the girl's school where she told him she did not want to see him. He then attempted to drag her into his car. The girl then said she never wanted to see him again and refused to answer any of his phone calls. Father brought the court proceedings.

No agreement was reached in conciliation; the court ordered a welfare report. This concluded that, however it had come about, the girl had reached an unshakeable view that she did not wish to see her father:

> *She sees him as someone who tries to 'push her into things'. She feels she cannot be herself when she is with him; he does not listen to her or understand she is growing into a young woman. She has tried to talk to him*

[17] The index children concerned were aged 13, 11, 10 and 6.

*about her feelings but he becomes annoyed and upset. She is terrified of him. She made the decision not to see him independently. She discussed it with her mother but no form of pressure was put on her. That was all in her father's head.*

In view of the child's clear views the Cafcass officer considered it was impossible to recommend contact; indeed she had tried to persuade father that the best thing would be for him to withdraw.

Father did not do so and obtained the leave of the court to obtain records relating to the counselling the child was having and to disclose the court papers to a contact agency for an assessment. The child then applied (8 months into proceedings) to be made a party and for these orders to be set aside. In her letter to the judge she wrote:

*I am writing as I am unhappy about how long this case is taking and what has been asked of me. When a court hearing is near I become very unhappy and emotionally down. Lately each hearing is beginning to make me physically sick with worry. On one occasion I had to stay away from school as I was ill. I am very worried about being tested by the people from the (X) Centre. I think it would be in my best interests if you did not allow these tests to take place*.

The orders were set aside and the case transferred to a high court judge who made the child a party. She then submitted a statement explaining how contact had become increasingly difficult for her because of her father's controlling behaviour; how she had been referred to a counsellor because of stress and self-harm and how she had already been discussing with the counsellor what she should do before the incident which led to the contact breakdown. Father withdrew his application.

In the remaining case the child was much younger (6) and although contact originally stopped because of his anxiety, the outcome was determined by father's failure to maintain contact.

Case 325. The parents separated when the child was 2. No regular pattern seems to have been established for the first couple of years, for reasons which were disputed. Father then brought court proceedings which ended, only 5 months prior to the sample proceedings, with an order for fortnightly visiting contact. Contact stopped when the child, who had recently been diagnosed with mild epilepsy, became very anxious that he would have an episode while he was with his father, who might not be able to cope with it. The parental relationship seems to have been too distrustful to enable them to manage this issue, resulting in father kicking in the door of the house when he was refused contact, the child becoming even more anxious in consequence. Father took the case back to court asking not only for the contact order to be made effective but for a residence order and investigations into mother's standard of care.

In-court conciliation was fruitless; a welfare report was ordered. The Cafcass officer reported that the boy had initially been reluctant – he was anxious about father's response to his condition and had also been upset by the derogatory remarks father had made about mother during contact - but had agreed to observed contact at the Cafcass office. This had gone well. However she recommended a period of contact at a contact centre so that a closer bond could form and the child and mother feel reassured. She also addressed some fairly pointed remarks to father about putting

the child's needs first and the importance of cooperating with mother rather than being obstructive and critical and effectively dismissed his residence application as '*not the real issue*'.
The court made a residence order to mother and ordered contact at the contact centre. Father was clearly disappointed at these decisions, though it is not clear whether he formally contested them, and then dropped out of both proceedings and the child's life. He did not turn up for the initial meeting at the contact centre or make any contact with the child even by way of a birthday card and, the matrimonial home in which he had been living having been sold, moved away without leaving a forwarding address.

In our view none of these four cases could be interpreted by any stretch of the imagination as examples of the court failing to deal robustly with a resident parent who was wilfully and unreasonably flouting a court order. Indeed in one (417) it could be easily argued that the initial consent order for unsupervised contact, which father was seeking to make effective, was unsafe and the process, which had involved neither a finding of fact hearing nor a welfare report, flawed, given that not only was there a considerable history of domestic violence but both the child and the mother were assaulted in the course of the case.

In three of these cases contact had stopped because of significant problems in the relationship between the child and the non-resident parent which appear to have been at least partly attributable to the ill-advised behaviour of that parent and in the fourth it was father's decision not to accept a period of supported contact at a contact centre and move away which meant there would be no contact. In each case the court sought to investigate the reasons for the children's resistance rather than simply accepting it and in three they were successful in getting contact restarted, at least for a period. We find it hard to think of anything more the court could or should have done.

## Summary

In all but three of the 39 cases which ended with no contact there was no contact at all at the point the application was brought. In most (27) there had been some contact since the parental relationship ended, but in at least 17 more than six months had elapsed since the child was last seen, with 13 having gaps of more than a year and five of more than two.

In 27 cases (69%) the resident parent was opposed to there being any contact.

85% of cases (33 of 39), and 87% of those where contact was opposed (26 of 30), involved allegations or concerns about serious welfare issues, ie domestic violence, child protection, drug or alcohol abuse, mental health or fears of abduction.

46% of applications (18 of 39) were formally withdrawn with a further 39% (15) effectively abandoned. Two cases were dismissed because the applicant did not turn up on the day. Only four (10%) were dismissed after a 'contested' final hearing, of which only two involved a trial of the substantive issues. Both involved resident parents who were opposed to contact because of a history of domestic violence, combined with drug abuse.

On average cases lasted for 12 months, with the shortest being withdrawn within a month, the longest, also a withdrawn case lasting for 32.

85% of cases (33) had at least one welfare report; two children were separately represented. Only seven cases had other professional evidence.

Direct contact was re-established in the course of proceedings in 13 cases, with a further two in which this was agreed/ordered but the non-resident parent did not take it up. Contact was typically supervised but in five cases there was a period of unsupervised contact which broke down.

Although welfare reports were ordered in 27 of the 33 cases in which non-resident parents withdrew or abandoned their applications, there were only six where the decision appeared to be linked to an adverse report. Indeed eight did not pursue their applications although the report was positive.

In 14 cases there were adverse reports from either the Cafcass officer or another professional. Eight of these were primarily based on the children's persistent refusal to have contact; all but one in the context of their memories of domestic violence against the resident parent. All the remaining cases involved serious welfare concerns.

In at least 15 cases the non-resident parent's behaviour seems ill advised: not turning up to court, refusing to see the Cafcass officer, not instructing their solicitor, not taking up contact which was on offer and in one case getting banned from a contact centre because of aggressive behaviour.

There were only five cases, all involving withdrawn applications, in which it might be argued that the outcome was unfair to the non-resident parent in that there were no welfare concerns of sufficient severity to rule them out and they had co-operated with the court process. Two of these cases turned on the child's opposition to contact. Three involved mothers who might be characterised as 'implacably hostile' although one of these cases involved some domestic violence and in the other this was alleged although a criminal prosecution against the father had failed.

Four cases started off as applications to give effect to orders made in previous proceedings. In each the non-resident parent either withdrew or abandoned the application. All involved children who were said to be resistant to contact, two of whom were separately represented, and three of the cases turned on this. In the remaining case the outcome was determined by the father's failure to maintain contact and dropping out of proceedings. We did not consider that any of these cases could be seen as examples of the court failing to deal robustly with a resident parent who was wilfully and unreasonably flouting a court order.

# Chapter 5: Cases in which only indirect contact was expected to take place following the court proceedings

## Introduction

There were 21 cases in which, at the conclusion of the proceedings, the only contact the court expected to take place was indirect. It is important to note that, as we found with the cases where no contact at all was anticipated, that this outcome was very rarely reached through adjudication, which applied to only four cases.

As we reported in chapter 2, in all but one of the 21 cases (where telephone contact was allowed) indirect contact meant by letters, presents and cards. For the most part (11 cases) frequency was not limited. In the remainder it varied between weekly (the telephone contact case) and only at birthdays/Christmases (two cases). Six children were expected to have indirect contact on at least a monthly basis, one five times a year, the other three times a year.

The arrangements for indirect contact rarely involved the use of an intermediary. It was also unusual for any obligation to be placed on the resident parent. The four exceptions involved sending photographs (2) or the child's school report (1); encouraging the child to reply (1); reading the cards to the child and informing the other parent of how they were received (1); sending a disposable camera so the other parent could send photographs (1).

In our interviews with Cafcass we asked about the circumstances in which a case might end with only indirect contact. It was clear from the responses that indirect contact is the option of choice where, for whatever reason, face to face contact is not feasible or desirable:

> *I don't ever think I've ever said no, there shouldn't be any contact. Generally with the ones that are very difficult they usually end up with indirect contact.*

> *I've only ever recommended two where I felt that even to be receiving cards and letters would be abusive and cause distress. There were findings against the father; he'd behaved abysmally against the mother without any consideration of the child's presence, welfare, whereabouts, when these incidents were going on. The child was extremely traumatized.*

What was also evident was that for the most part indirect contact was not seen as an end in itself but as an intermediate step to establishing or re-establishing direct contact. This might be a fairly short-term aim, perhaps to take the child out of the middle of chronic conflict or more indefinite, maintaining some link with the non-resident parent to keep open the possibility that at some point in the future a child who was resistant to contact would want to get in touch:

> *It's about trying to retain some links whilst at the same time just lifting that burden from the child. It usually gets to the older age for children where it's been rattling along for years and I think we all suggest at times that direct contact is suspended and you try and look as creatively as possible at how you maintain some links without having to go through that weekly or fortnightly ordeal.*

> *If we can establish indirect contact so the absent parent can write regularly, and we give some advice, they can send a postcard, with 'Hi, love Mum or Dad', just to get that going, then often it does move on to direct contact. Again, it's about letting the child know that the absent parent is interested in them and thinking of them. And then the child is more likely, I would say, to say well I would like to see them.*
>
> *The child may not want to see the parent, for whatever reason, but I think the father should still be allowed some indirect contact. Whether the child will respond, it's up to them but the child should know that the father, or the mother, is interested.*

Only rarely was indirect contact seen as a long term strategy, in cases where the level of risk posed by the non-resident parent was deemed too high to be managed even in a supervised setting.

## Profile of the cases ending in only indirect contact (21)

Twenty-one non-resident parents (19 fathers and two mothers) ended up with only indirect contact. All but one had originally sought face to face contact; of whom at least half had hoped for staying contact. All the applications were brought by the non-resident parent.

The majority of cases (15; 71%) involved a single child, with only one case having more than two (Appendix table 1). The average age of the index child at the end of the proceedings was nine, older than any of the other outcome groups (table 2.13, chapter 2), with over half being 10 or above.

At the time the application was brought none of the non-resident parents were having face to face contact and only three had indirect contact. While almost all (18) had had some direct contact since separation only seven had seen the child within the past six months, with nine having gaps of more than one year and five of more than two. In two cases there were already court orders for indirect contact in place, which the applicants were seeking to vary, while five had orders for face to face contact, which they were seeking to enforce.

Typically, face to face contact was opposed in principle from the start (80%, 16 of the 20 where this was sought), with resident parents seeking supervised contact in a further two and the child refusing in a third. In total seven of the 21 index children in this group were reported to be refusing face to face contact, with another eight opposed to any contact. There was only one case, in which the dispute was about the presence of father's new partner at contact, in which none of these conditions applied.

Again, a high proportion of resident parents raised serious welfare concerns about contact with 81% (almost identical to that in the no contact cases) involving domestic violence, child protection, drug or alcohol abuse, mental health or fears of abduction (table 5.1). There were rather fewer cases which involved multiple concerns than was found in the no contact group, but this still applied to just over half the group, the mean number being 1.5, with again, some cases raising issues in up to five categories.

**Table 5.1: Allegations and concerns in cases ending with indirect contact only**

| | Contact opposed in principle | | All cases | |
|---|---|---|---|---|
| Allegations and concerns | No. | % | No. | % |
| Domestic violence | 7 | 44 | 10 | 48 |
| Child protection issue | 8 | 50 | 10 | 48 |
| Drug abuse | 4 | 25 | 5 | 24 |
| Alcohol abuse | 6 | 38 | 6 | 29 |
| Mental health | 4 | 25 | 4 | 19 |
| Abduction | 1 | 6 | 1 | 5 |
| *Any of these* | *13* | *81* | *17* | *81* |
| | | | | |
| Multiple concerns | 9 | 56 | 11 | 52 |
| Minimum | 0 | | 0 | |
| Maximum | 5 | | 5 | |
| Mean number of concerns | 1.9 | | 1.7 | |
| | | | | |
| (N=) | (16) | | (21) | |

As we reported at the beginning of the chapter, there were only four cases in which the outcome was reached through a contested final hearing (table 5.2). The most common route was a consent order, followed by the case being withdrawn, these two accounting for two-thirds of the cases. Seven cases had a contested interim hearing, of which only one went on to a contested final hearing. In total only 10 cases had either a contested interim or final hearing.

**Table 5.2: How decisions were reached in cases ending in indirect contact**

| | No. | % |
|---|---|---|
| Formally withdrawn | 5 | 24 |
| Consent order | 9 | 43 |
| Order not contested but not agreed | 3 | 14 |
| Order made after contested hearing | 4 | 19 |
| | | |
| (N)= | (21) | |

**Table 5.3: Duration of cases ending in indirect contact**

In general proceedings in these cases tended to be longer than those which had ended in no contact (a mean of 15 months compared with 12; Appendix table 7), with over half lasting for more than a year and almost a fifth for more than two. Less than a third completed within six months (table 5.3).

| Months to completion | Contested | Withdrawn | Consent order | Other | All | |
|---|---|---|---|---|---|---|
| | % | % | % | % | No. | % |
| Up to 3 | 0 | 20 | 0 | 0 | 1 | 5 |
| 4-6 | 0 | 40 | 33 | 0 | 5 | 24 |
| 7-12 | 0 | 0 | 22 | 33 | 3 | 14 |
| 13-18 | 25 | 20 | 11 | 33 | 4 | 19 |
| 19-24 | 75 | 0 | 0 | 33 | 4 | 19 |
| More than 24 | 0 | 20 | 33 | 0 | 4 | 19 |
| | | | | | | |
| (N=) | (4) | (5) | (9) | (3) | (21) | |
| | | | | | | |
| *Minimum* | *15* | *2* | *5* | *9* | *2* | |
| *Maximum* | *23* | *28* | *29* | *22* | *29* | |
| *Mean* | *20* | *11* | *14* | *15* | *15* | |

### Welfare reports and expert evidence

These cases had a higher proportion of welfare reports than cases ending in no contact (18 cases; 86%). Ten cases had more than one report and one a report from a guardian ad litem after the child was made a party. Other professional evidence was also more common (9; 43%), though almost entirely from mental health/health professionals, with one case involving tests for drug abuse and two police evidence. There was only one case in which a welfare report was not ordered and there was no other professional evidence.

Case 101. The non-resident father was into the third year of a 7-year prison sentence. The children (aged 8 and 5) had been taken to see him in prison until the parental relationship foundered almost two years ago, after which there had been an exchange of letters, cards and presents. The children had recently stopped responding, father brought the case to get indirect contact restored. By the time the case came to court the children were once again writing to him and the application was withdrawn, father having achieved his objective.

### Was face to face contact ever established during proceedings?

There were only three cases in this group where any face to face contact took place during proceedings. Two never moved beyond supervised contact; the other actually started off on an unsupervised basis and progressed to staying contact until the child became increasingly resistant, when a period of indirect contact was ordered in the (as it turned out vain) hope the child would change her mind. There were also two cases where contact was ordered or agreed but the child refused and one where the non-resident parent refused to take up contact on the initial conditions specified, viz that his new partner should not be present. Father's obduracy, although understandable, does seem ill-advised, since over time there would seem to have been a good chance that unrestricted contact would have been re-established.

## Why did non-resident parents settle for indirect contact?

In 16 of the 20 cases in which the non-resident parent failed to secure face to face contact s/he either withdrew their application (4) or did not oppose the order (12).

Welfare reports were ordered in all but two of these cases, one of which had other expert reports. In contrast to the group where no contact was achieved, adverse professional reports did seem to be instrumental in many cases, with parents conceding after a welfare report in nine cases, and reports from either a guardian ad litem or other professional in two. (We look at these cases more closely later.) In one case indirect contact was agreed after a finding of fact hearing on sexual abuse.

As we found in the previous chapter, however, some parents (four in this instance) gave up even though the professional reports were not against them. These cases were very diverse. One we have already mentioned, where the father refused to accept the terms on which contact was initially to take place. The other three are set out below.

Case 1007. The father became despondent when the children, who had not seen him for many years and were adamantly against direct contact for the time being, but did not rule it out in the future, only responded to one of his letters. He may have also been influenced by the court's requirement that he undertake a liver test in relation to his alleged alcohol abuse, one of the reasons why mother had stopped contact in the first place. He was, however, left in a marginally better position than before in that the mother gave an undertaking to the court that she would facilitate the indirect contact.

Case 340. Father withdrew saying he could not cope with the stress any longer. The mother in this case had defied an earlier court order for supervised contact and continued to resist for most of the case because of her concerns about father's mental state (he was a diagnosed paranoid schizophrenic whose condition was exacerbated by drug abuse) and her experiences of domestic violence (which were admitted). All the professionals, however, were in favour of supervised contact and mother eventually gave in, despite her concerns about the level of monitoring provided in the contact centre (borne out when there was an incident). Supervised contact was suspended by the contact centre then resumed under a more rigorous regime. The child attended once, refused to go again and father gave up.

Case 934. The Cafcass officer was in favour of direct contact but recognised the substantial difficulties involved which included distance, mother's insistence on supervised contact because of previous domestic violence, father's work commitments which meant he could not attend the local contact centre and hostile relationships between the two extended families. Having set out the problems, however, she did not offer any solutions. Father failed to attend the last two hearings.

## The issues in cases which went to a contested final hearing

Only four cases went to a contested final hearing, in one of which the father did not actually turn up. He had also failed to comply with an order for drug tests. Nonetheless the court made an order for indirect contact in line with the recommendations of the welfare report but against the wishes of the mother who had agreed to this at an earlier stage in the proceedings but was now opposed to any contact (which is why we have counted this case as having a contested final hearing). The child in this case was strenuously opposed to any face to face contact because of her experience of father's aggressive behaviour to mother at handovers and while tolerating the interim indirect contact refused even to allow the Cafcass officer to set up observed contact.

Of the three cases which were actively contested by the contact parent all involved domestic violence, two concerns about mental health and drug abuse and one child sexual abuse. All three of the children involved (aged 6, 7 and 12) were either completely resistant to contact or evinced considerable anxiety to the professionals. Only one of these cases was contested on the facts, with the court finding against the contact parent in respect of violence, drug and alcohol abuse, self-harm and sexual abuse of the child. In the other two it was a question of whether, given the seriousness of the concerns, which were not disputed, there should be direct contact. Neither of the contact parents in these cases could call on any support from the professionals involved. Indeed in one the welfare reporter was very outspoken in attributing the child's fears to the father's *'abusive, derisive and disparaging behaviour'*.

The second case (630) was more problematic because although there were multiple, evidenced and admitted concerns about father he had, in the course of proceedings - which went on for nearly two years - attempted to address them and was acknowledged to have made some progress. However he was still considered to be too disturbed for contact to be safely introduced in the near future, particularly since the child was still very young.

## Adverse professional opinion

In total, 15 cases which ended with indirect contact had an adverse report from a professional, at least in the sense that direct contact was not being recommended.

In three of these cases, which all concerned young children, the recommendation was based on multiple, evidenced and/or admitted concerns about the non-resident parent including sexual abuse, domestic violence, drug and alcohol abuse and psychiatric illness.

The remaining 12 were wholly or in part based on the child's resistance to direct contact. The children in these cases were mainly of secondary school age by the end of the proceedings, although there were two seven year olds and one four year old. The attitudes of all the younger children and all but three of the older ones were said to have been linked either to their memories of domestic violence or other experiences of poor parenting – two children, for example, had originally been removed from neglectful mothers.

The non-resident fathers in two of the three exceptions, where there was no element of abuse or risk, had disappeared from their children's lives many years before and their reappearance was not welcomed; indeed in one it seems to have caused the child considerable distress and disturbance, conceivably because the mother was so upset by it. A child psychiatrist engaged to give an opinion considered that, although it might be in the child's interests in the long term to get to know his father, considerable therapeutic work would be required with both child and mother to help them deal with their feelings about what they saw as father's abandonment. (We look at this case, number 804, in more detail later).

In the third case, which involved three teenagers, although there had been contact for seven years this had gradually petered out, for reasons which the Cafcass officer considered to be a combination of the children wanting to spend time on their own activities, their feeling that they played second fiddle to father's series of girlfriends, and their resentment at the disparity between father's standard of living and their own. The court proceedings had increased their hostility.

## Could the process or the outcome be seen as unfair to the non-resident parent?

As in the previous chapter on cases ending in no contact we examined the indirect contact cases to see whether there might be any justification for regarding either the outcome or the process as unfair to the non-resident parent. Again we emphasise that this is necessarily a subjective view but that where we thought there was any room for doubt the case has been included.

In total we consider there were at most five cases in which it was even arguable that the outcome of the case was unfair to the non-resident parent in that there were no *current* serious welfare concerns, as we have defined them, which would prevented direct contact. Three concerned older children (aged between 12 and 14) who were adamantly opposed to direct contact. In two of these (804, below and 318) no contact had been attempted for many years (seven in one, nine in the other) and the non-resident father's reappearance was not welcome and in one case deeply distressing.

Case 804. The child was 14 and attended a special school because of learning difficulties and attention deficit disorder. His parents had been separated for at least 10 years and he had not seen his father for 7. Father had parental responsibility and paid regular contributions through the Child Support Agency. After separation father lived nearby for some time and there was regular contact, including staying, but after he moved away, according to his account because of the tensions with mother, he decided to stop seeing the child. Mother said the child was devastated by this and attributed many of the child's psychological problems to the loss. Since father's application the child was said to have required counselling.

At the first hearing it was agreed that a psychiatric report should be obtained on the child. This concluded that a great deal of work would need to be done with him and also with the mother before contact could take place. The child needed to resolve his feelings about being '*abandoned*', to '*disentangle*' his own views from those of his mother and to reduce his dependence on her. Mother needed therapeutic input to enable her to put aside her '*emotional grievances'*. Simply ordering contact would make both child and mother dig their heels in. A '*gentle approach'* was therefore recommended whereby father would write to the child while therapy was undertaken.

There was, unfortunately, a long waiting list for these therapies. The magistrates decided that the case should not be kept before the courts in the interim. Father agreed to an order for indirect contact provided a third party was involved to facilitate it.

In the third case, in contrast, the father had been trying, unsuccessfully, to get direct contact for many years.

Case 425. The parents separated when the child, now 13, was about 2. There had been no direct contact for about 9 years. These were the third set of proceedings. The first set, which involved 3 welfare reports, ended 7 years ago with an order for indirect contact on the grounds that the child was implacably hostile. The reasons for this were disputed, with father alleging mother had alienated the child from him, mother that it was the child's experiences of witnessing domestic violence. Father brought proceedings again the following year, this time seeking residence. Those proceedings lasted almost 3 years, with another 3 welfare reports, which again

recommended there should be only indirect contact because of the child's continuing opposition. The court also made an order preventing father making any further applications without leave. Two and a half years later father applied for leave requesting that a different Cafcass officer be appointed. Both requests were granted. The new officer, however, reached the same conclusion, that the child remained completely opposed to seeing his father and that an order for direct contact was therefore simply not practicable. Father withdrew his application, leaving the order for indirect contact in force.

The fourth case also concerned children who were totally resistant to contact, although they were younger (10 and 7). There were allegations of domestic violence and harsh treatment of the children. The father admitted some incidents of domestic violence but denied others and maintained that the allegations were an attempt to push him out of his children's lives. A finding of fact hearing concluded that mother had 'exaggerated' what had happened.

The children, however, remained resolutely opposed to contact throughout three welfare reports, prepared by two different officers, and 13 months of proceedings and consistently alleged they had been maltreated. According to one report, the eldest child:

> *Does not want to see his father who had hit him with his slipper or shoes all the time. He could not remember any good things about him and was scared of him*.

Observed contact, ordered by the court, was stopped after the first session because of the children's distress, and when the court then ordered a period of indirect contact they refused to respond and ripped up father's communications. The dilemmas faced by the court in such circumstances were set out in the welfare report:

> *Wherever the truth lies, whether mother has totally turned the children against the father and encouraged them to make false allegations as father claims, or whether father did consistently physically and emotionally abuse them as mother claims, the fact remains that these children, aged nearly 10 and 7, are refusing to see their father and they cannot be persuaded to. The issue for the court is how can contact be progressed? There is the children's consistent opposition to any such contact and the negative emotional impact when (the previous officer) attempted to introduce direct contact. This fact, together with a four month period of indirect contact which has not appeared to alter the children's views at all…does not bode well for any future contact. The likely effect of ordering direct contact would be entirely negative. Facilitation of such contact given the children's forceful views would be almost impossible. If forced on (the 10-year old) he would suffer considerable anger, emotional upheaval and resentment, while the younger one would suffer distress. It would not seem possible to justify imposing such distress on the children and it remains impossible to envisage happy and relaxed contact taking place in the foreseeable future.*

Despite the children's objections to any contact at all, however, the report recommended indirect contact:

> *So that when the children are older they can reflect on their situation and have some positive material to help them do so*. *When the children mature they may start to express a wish to know father once more.*

In the fifth case the child was very young and the case turned on mother's unyielding resistance to contact based on allegations of domestic violence, drug and alcohol abuse. Father denied all the allegations, whose veracity was never addressed, because mother first disappeared and then obtained medical certificates to say she could not attend court. Two welfare reports, not from Cafcass, were, in our view, partial, inadequate and contradictory.

Case 451. The parents never lived together and their relationship ended before the child, who was 3 at the time proceedings started, was born. Contact was fairly infrequent and always in the presence of either mother or a grandparent. According to mother this was because she had witnessed father's poor care of his child by another relationship, because he used illegal drugs and because he had a violent, controlling nature. (Although mother only cited one incident of physical violence to her, she claimed father had been violent to the other child's mother and to previous girlfriends and she was afraid to stand up to him). The situation became more conflicted after mother formed a new relationship with, allegedly, father sending abusive text messages and damaging her car. Contact was stopped after father turned up at the grandparents house '*smelling of alcohol'* and a row ensued, causing the child, it was claimed, to become distressed. Mediation was attempted but failed; father brought proceedings in the family proceedings court. By this time he had not seen the child for 9 months.

Mother submitted an initial statement in which she said that the conflict and the initiation of proceedings had caused her to have panic attacks and she was afraid of relapsing into the depression from which she had suffered in the past. She did not turn up to any hearings, ceased instructing her solicitor and could not be contacted by the Cafcass officer. Eight months into proceedings father made an application for disclosure of mother's address and the case was transferred to the county court. Mother was located but submitted a letter from her GP to say she could not attend court because of anxiety precipitated by fear of having to face father in court. The court ordered a further welfare report but since mother was no longer living in England (though still in the UK) Cafcass said they could not do this and the request was referred to the local social services.

The social worker who prepared the report (a year into the proceedings) only interviewed mother (because father was still living in England). On the basis of this partial information she concluded that the child was now settled and happy and the level of conflict between the parents was so great that contact was not advisable. The court was not prepared to accept this and ordered that father be interviewed and an addendum submitted. After a delay when this was considered by the legal department in the local authority the social worker interviewed father by phone. This time the report concluded that '*there was nothing to indicate that the father/son link could not be to the benefit of the child*' and that '*there was a feeling of genuine child-centred-ness in father's conversation*'. She had not, however, been able to discuss this conclusion with the mother.

By this time father was suggesting that because of the lapse of time there should be a period of indirect contact. Mother opposed this, saying she would prefer there was no contact at all so she and the child could '*get on with our lives*' but said she would accept and facilitate it if the court so ordered.

From the information on file we were unable to form an opinion as to whether the child in this case had been unjustly deprived of a potentially positive relationship with a caring father by a lying and manipulative mother or whether mother's actions, if not

laudable, were understandable and designed to protect the child, as she put it, from the risk of significant harm from a controlling and violent man. It appears that no-one followed up mother's allegations of father's abuse to previous partners or poor care of his other child and although the court did eventually ask for a psychiatric report on mother this never seems to have been supplied. Even if the outcome was not unfair we feel the process was flawed because of the extent to which the case appeared to just drift.

As we found in the cases ending with no face to face contact, despite the prevalence of serious welfare allegations or concerns in cases ending with indirect contact it was very unusual for there to be a finding of fact hearing (two on domestic violence, two on sexual abuse) and only eight cases had any expert evidence other than a welfare report. Again however, detailed analysis indicates that in most instances the allegations were admitted, proved or there was other supporting evidence. Thus in the six cases in which domestic violence was a key issue but which did not have a finding of fact hearing the allegations were admitted in three; in the fourth the father had several convictions for harassment and the fifth went to a contested final hearing in which we presume there was an opportunity for the issues to be tried. The only exception was case 451 described above.

There were seven cases in which only welfare concerns other than domestic violence were at issue but there was no finding of fact hearing or professional evidence apart from a welfare report. However in none could it be said that this made the *process* unfair to the non-resident parent:

- In two the children were living with their father having been removed from the mother by Social Services;
- In one the court sought to investigate by ordering a liver test for alcohol abuse which the father failed to provide, then withdrew from the case;
- In three the central issue was the child's resistance to contact rather than the truth or otherwise of the allegations. In two of these there were historic allegations of sexual abuse, made by the child against either the contact parent or a sibling living with that parent. Both of these had been investigated and no further action taken. In the third, the allegations made by the children were relatively minor and nothing would have been gained by testing their veracity.

In both the cases in which there was a hearing on whether there had been sexual abuse the court found against the contact parent. Since these fathers had been acquitted in criminal proceedings it might be argued that the decision in the family court, based on a lower standard of proof, was unfair. Both these cases, however, went before a High Court judge, both involved many other concerns and in the one case for which a transcript of the judgement was available the judge was unequivocal:

> *I find as a fact that father is a violent, mentally unstable man who takes drugs and abuses alcohol, who throughout his relationship with mother repeatedly assaulted and was violent to her and persistently harmed himself. In particular I find that much of this behaviour took place in front of child. I find he sexually abused the child on at least one occasion. In this respect I am aware of the seriousness of the allegation and I accordingly bear in mind that although the standard of proof is the ordinary civil one the evidence must be cogent. I consider it is.* (Case 1107).

It should be noted, moreover, that despite adverse findings in relation to the allegations neither case stopped at this point, in each the court ordered a risk assessment on the question of contact. In the first the father did not pursue this, opting instead to agree indirect contact. In the second the report concluded that contact was not possible because of father's inability to face up to what he had done.

## Enforcement

Six of the applications which ended in indirect contact had orders for direct contact made in previous proceedings, one for supervised contact, one for unsupervised visiting, two for staying contact and one for reasonable contact. While not all the applicants were specifically applying to have those orders made effective all applied because contact had stopped and all failed in the sense that the outcome gave them less contact than had previously been awarded. One application went to a contested hearing, two were withdrawn and three ended with a consent order.

Two of the parents were also applying for penal notices. One did initially succeed, resulting in supervised contact being re-established in line with the original order, but the father then withdrew and accepted indirect contact (see case 340, below).

The interval between the end of the previous proceedings and the 'enforcement' application ranged from five months to 10 years. The most recent was an order for contact at a contact centre. This had been opposed by the resident mother who had never complied with it, probably the most blatant example of non-compliance in the sample. However, as can be seen from the details given below, mother's concerns were shared by the professionals concerned; where they differed was whether contact could be managed safely.

Case 340. The parents had been in dispute since they separated, 6 years ago, when the child was 3, with the mother opposing direct contact because of father's mental health - he had a diagnosis of paranoid schizophrenia, aggravated and possibly triggered, by drug abuse. There was also a history of domestic violence, which father admitted.

Professional opinion, from a psychiatrist and Cafcass, was that while unsupervised contact was too risky, supervised contact was viable. Mother held out against this in the first set of proceedings, refused to comply with the order and continued to oppose for most of the sample proceedings. A series of penal notices made her comply first with contact observed by Cafcass and then with an interim order for contact at a contact centre. Even after the contact centre suspended contact after a violent altercation between father and maternal grandfather (who accompanied the child to the centre) - occasioned by father shouting at the child for not wanting to speak to him - the court, and the professionals, pressed on with trying to get contact going. The contact centre, which did not usually offer one to one supervision, agreed to provide a worker to monitor contact and help father develop a relationship with the child. Mother, who had expressed concern about the level of supervision afforded, agreed to this. Four months later, however, father decided to withdraw on the grounds that he could no longer cope with the stress and the child was resistant and upset. He agreed to limited indirect contact on the basis of him sending cards at Christmas and the child's birthday and mother sending him photographs twice a year.

In the remaining cases the most recent order had been made 18 months previously, the others two, four, six and 10 years earlier.

This last case (318) was unusual in that there had been no contact for nine years, for reasons which were disputed, but father had not brought the case back to court before. The resident mother was now opposing contact on the grounds that the child had no memory of her father and no interest in meeting him; that his previous contact had been unreliable; it had been his decision to drop out and he had made no attempt to contact them for years. The court ordered a welfare report which confirmed that the child did not want to see or speak to her father at this point; she was prepared to have indirect contact but wanted to make her own decisions about anything further. The Cafcass officer concluded that the child's clear and freely expressed wishes should be respected. A consent order was made for indirect contact, any other contact to be in the child's control.

In three of the other cases contact had stopped very recently (within three months of the sample application), meaning that contact had taken place for, respectively 15 months, 21 months and six years before foundering. In each case contact had included staying at some point, in two in line with the court order, in one progressing from visiting contact.

The circumstances in which contact broke down in these three cases were very different except that in each there were, at the very least, question-marks over the behaviour of the non-resident parent.

Case 338. The child, aged 9, had been living with his father for 4 years, having been removed from his mother by Social Services because of concerns about her mental health, alcohol abuse and neglect of the child. There had been 2 previous set of proceedings. In the first father was given residence, with mother having only supervised contact. In the second mother obtained unsupervised contact and subsequently the parents agreed staying contact. This broke down after an argument when mother struck the child. He subsequently refused to go for contact.

Case 413. For 6 years the children, aged 15, 13 and 10, had been having staying contact, in line with the court order, every other weekend, with additional visiting during the week. Over the past few months this had petered out. Father accused the mother of alienating the children; mother claimed she had always encouraged contact but the children had become increasingly resistant. Two of the children were having psychiatric help because of the difficulties they had been experiencing over contact. Interviewed by Cafcass the index child described her father as '*hard to love'*. He shouted at them and on occasion hit them and they took second place to his girlfriends and his social life. She felt sorry for him but he had '*lost me a bit'*. She did not want to see him but might speak to him if he phoned.

Case 408. The child was 6. Despite a history of domestic violence, admitted by father in previous proceedings, the parents had an agreed order for reasonable contact, made 2 years previously. Father brought the proceedings because contact had been suspended on several occasions and then stopped. He also sought discharge of a Prohibited Steps Order, which prevented him seeking information from the school or other agencies which might enable him to discover mother's address because, he said, he wanted to play a more active part in the child's life. Mother opposed both applications on the grounds of father's aggressive behaviour at handovers in front of the child which meant the child had become reluctant to continue with contact and she was no longer prepared to compromise her own safety.

No member of the family in this last case was prepared to assist, because of their experiences of father's aggression, and mother was not prepared to consider a contact centre because father had followed her from there in the past. The Cafcass officer considered there was no alternative to indirect contact and was unequivocal in her criticism of father:

> *It is very unfortunate when circumstances arise which prevent direct contact. In fairness to mother she has not shut the door to the possibility of future direct contact. But in the short term I think the court has to take cognisance of the fact that if direct contact resumed, mother has genuine fears if father were to discover her address. The court has a responsibility not only for the safety of the child but also that of the mother. I have no doubt that in the past mother has made strenuous attempts to facilitate contact, regardless of the risk to herself. She continues to try and promote father in a positive way. Any distorted perceptions held by the child are primarily due to father's behaviour. And for that he must remain accountable.*

The remaining, very complex, case was the only one ending in indirect contact in which unsupervised contact was established in the course of the proceedings.

Case 343. The parents separated when the child, now 9, was 3 months old. Her two older brothers, who had been on the Child Protection Register because of alleged abuse by mother when they were living with her, now lived with father. There had been chronic difficulties over contact, several previous sets of court proceedings and 12 previous welfare reports. Both sets of siblings made allegations of sexual abuse, the boys against a maternal uncle, the girl (who was 4 at the time) against (separately) her brothers, her father and mother's then partner. Child protection investigations proved inconclusive but all the children were displaying sexualised behaviour and the parents were advised never to leave the girl with her brothers unsupervised. A family assistance order made in the last set of proceedings seemed to help with contact, which continued, on a staying basis, without the parents resorting to litigation, for 3 years, although the mother subsequently said she had been increasingly concerned about the child, who was having nightmares, had lost weight and started soiling.

Mother stopped contact after the child's half-sibling alleged she had been sexually abused by one of the boys. The index child (now 8) then also alleged sexual abuse by a cousin and referred again to sexual abuse in the past. All the allegations were investigated but according to the Cafcass officer in the sample proceedings, '*it was not been determined if these were incidents of abuse, childhood exploration or misinterpretation of events*'. Given the age of the children at the time and the nature of the allegations, no intervention was considered necessary. There was also a suggestion that mother's own experience of sexual abuse as a child may have made her extra-sensitive to the issue.

The child was referred for psychiatric help. Father was advised to let things settle down and did not bring proceedings for 12 months. By this time the child was refusing to see him.

The court ordered a report from the child's psychiatrist who concluded that contact was not precluded but that work needed to be undertaken with the family. The Cafcass officer suggested a review of the evidence might be helpful, followed by a referral for therapy. Neither of these happened because the parents agreed to resume 'activity-based contact'. This went well and after a few months the child was again having contact at father's house, including, after a while, staying contact.

Mother stopped contact once more after the child said she was frightened of her father, who drank too much and could not control his temper, but was too scared to tell him she did not want to go, asking if the judge would stop it. The school were also voicing concerns about the child's eating problems.

The Cafcass officer recommended a period of indirect contact, suggesting that the situation could be due to the fact that the child had been subject to parental conflict for 11 years, and expressing the hope that her attitude might change if the parents were able to convey to her that they were working together. The child had counselling and treatment for her eating disorder and there were fewer concerns about her welfare. However she remained adamant that she did not want to see her father or her brothers and when mother broached the subject became angry and distressed. A consent order was made for indirect contact to continue.

In all, then, of the six cases in which the application might be characterised as for 'enforcement', there were four in which there were serious welfare concerns and four in which the children were resolutely opposed to contact. We did not consider there were any where the court took an insufficiently robust attitude to compliance with the order.

## Summary

Twenty of the 21 non-resident parents who ended up with only indirect contact had originally sought direct contact. At the point they made their application none were having direct contact and only three indirect. Only three achieved face to face contact even on an interim basis. In all but one case the resident parent was opposed to either any contact or unsupervised contact or the child was resistant. Serious welfare issues were raised in four out of five cases.

Most outcomes were reached either by a consent order or by the case being withdrawn. Although seven cases had contested interim hearings, only four went to a contested final hearing. All the children in these cases were either strenuously opposed to contact or displayed considerable anxiety to professionals about it.

All but one case had either a welfare report or a report from another professional, 15 of which advised against direct contact. Twelve of these recommendations were wholly or in part based on the child's resistance to direct contact, typically because of their memories of domestic violence or other experiences of poor parenting by the now non-resident parent.

In 11 cases the resident parent's decision to stop seeking face to face contact seemed to be directly linked to such a report. In one case indirect contact was agreed after a finding of fact hearing on sexual abuse. Four parents, however, did not pursue their applications even though the professional reports were not adverse.

Despite the prevalence of serious welfare concerns finding of fact hearings were rare. In most instances, however, the allegations were admitted, proved or there was other supporting evidence. Of the cases where domestic violence was a key issue, for instance, there was only one where none of these conditions applied.

In total we consider there were at most five cases in which it was even arguable that the outcome of the case was unfair to the non-resident parent. In four of these, given the unwavering hostility of the children, we find it hard to know what else the court

could have done. In the fifth, while there were elements in the process which could be criticised, since the issues were never tested it was impossible to tell whether the outcome was also unfair to either the non-resident parent or the child.

In six cases applicants were unsuccessful in getting orders made in previous proceedings made effective, including two in which penal notices were sought. The intervals between the previous orders and the sample application ranged from five months to ten years, though in most cases contact had stopped quite recently. In all these cases there were either serious welfare issues (4) or the children were resolutely opposed to contact. Only one of these cases had to be adjudicated by the court, two were withdrawn and three ended with a consent order. We did not consider there were any cases in which the court took an insufficiently robust attitude to compliance with the order.

# Chapter 6: Cases in which only visiting contact was expected to take place following the proceedings

The first section of this chapter presents an overall picture of the 69 cases in which, as the result of the proceedings, the court would have expected only visiting contact to take place. In 11 of these the contact was expected to be supervised. It then focuses on the 37 cases in which contact parents were known not to have achieved what they had sought at the outset. Finally it looks at 32 cases where unsupervised face to face contact was achieved in the face of initial opposition from the resident parent.

## Profile of the cases which ended in visiting contact (69)

Most of the cases (47 of 69; 68%) involved a single child, typically very young, 23 of them (49% of 47) being less than three years old at the *start* of the proceedings. Across the whole group of cases ending in visiting contact 46% (30 of 66) involved at least one child under three, while in 74% (49) the youngest child was under five. As reported in chapter 2, the mean age of index children at the *end* of cases where there was expected to be unsupervised visiting (5.7 years) was younger than those in any of the other outcome groups apart from supervised visiting (3.9 years) and may explain why there was to be only visiting rather than staying contact. Twenty-three per cent (13 of 57) were still under three and 41% (24) under five (compared to 13% and 23% where children where to have staying contact).

As one might expect, non-resident parents who ended up with visiting contact were more likely to be having contact at the point the application was made than those who only got indirect contact or no contact at all. Nonetheless most (52 of the 68 where this was known, 76%) were not. Similarly, while more of those who were not having contact were known to have had contact at some point since separation (44 of 50; 88%) there was still a substantial number (19) who had not seen the child for more than six months, with nine having gaps of more than one year and two of more than two.

Consistent with this picture of a merely *somewhat* less problematic group, there was only one case in which the dispute was known to be purely about the quantum of visiting contact. Almost a third of resident parents (21) were contesting the principle of contact, with another 16 wanting contact to be supervised. In a further four cases either the index child or a sibling was said to be opposed[18]. There were only 21 cases where none of these was known to be the case, in 10 of which the dispute was about whether there should be staying contact. In most of the remaining disputes it seemed that the contact parent was primarily concerned to get contact re-established or trying to ensure that the resident parent did not prevent it rather than there being a dispute about a particular aspect of contact.

In cases which ended with unsupervised visiting contact just under half (27; 47%) involved allegations or concerns about serious welfare issues (table 6.1). This is much less, as one would expect, than in the cases which ended with no face to face contact (over 80%; table 2.7, chapter 2). However in cases where the outcome was supervised contact the proportion (73%; 8 of 11) was approaching those levels.

[18] In total, there were nine cases in which the index child was said to be opposed to face to face contact, and a further two in which a sibling was. One child was happy to have face to face contact but did not want to stay.

**Table 6.1: Allegations and concerns in cases ending in visiting contact**

| | Contact outcome expected by the court | | | |
|---|---|---|---|---|
| | Unsupervised | Supervised | All visiting contact | |
| Allegations and concerns | % | % | No. | % |
| Domestic violence | 26 | 46 | 20 | 29 |
| Child protection issue | 17 | 36 | 14 | 20 |
| Drug abuse | 12 | 36 | 11 | 16 |
| Alcohol abuse | 14 | 27 | 11 | 16 |
| Mental health | 9 | 18 | 7 | 10 |
| Learning disability | 0 | 9 | 1 | 1 |
| Abduction | 17 | 9 | 11 | 16 |
| *Any of these* | *47* | *73* | *35* | *51* |
| | | | | |
| Multiple concerns | 29 | 55 | 23 | 33 |
| Minimum | 0 | 0 | 0 | |
| Maximum | 5 | 4 | 5 | |
| Mean number | 1 | 1.8 | 1.1 | |
| | | | | |
| (N=) | (58) | (11) | (69) | |

Similarly, where the resident parent was opposed to contact in principle, or was looking for supervised contact, the proportion of cases in which serious welfare concerns were voiced was much higher (73% of 37). Over half the cases in these groups involved multiple allegations/concerns (table 6.2).

**Table 6.2: Allegations and concerns in cases ending in visiting contact where direct or unsupervised contact opposed by resident parent**

| | Contact opposed/supervised sought | |
|---|---|---|
| Allegations and concerns | | |
| | No. | % |
| Domestic violence | 15 | 41 |
| Child protection issue | 12 | 32 |
| Drug abuse | 8 | 22 |
| Alcohol abuse | 8 | 22 |
| Mental health | 7 | 19 |
| Learning disability | 1 | 3 |
| Abduction | 9 | 24 |
| *Any of these* | *27* | *73* |
| | | |
| Multiple concerns | 19 | 51 |
| Minimum | 0 | 0 |
| Maximum | 5 | 5 |
| Mean number | 1.6 | |
| | | |
| (N=) | (37) | |

In line with the findings reported in the previous two chapters, at the end of the day most cases were agreed (table 6.2). Only six (9%) appear to have gone to an even

partially contested final hearing and at least two of these, and possibly three, ended with a consent order. Two cases were not agreed but not actively contested. Three cases were withdrawn, six ended with an agreement without any order and 53 with a consent order. Only 12 cases (17%) even had a contested interim hearing (including one of those which also had a contested final hearing).

### Table 6.3: How decisions were reached in cases ending in visiting contact only

| | All cases | | Disappointed with form of contact | |
|---|---|---|---|---|
| | No. | % | No. | % |
| Formally withdrawn | 3 | 43 | 2 | 7 |
| Agreement, no order/order of no order | 5 | 7 | 2 | 7 |
| Consent order | 50 | 72 | 22 | 73 |
| Order not agreed but not contested | 2 | 3 | 2 | 7 |
| Order made after contested hearing | 6 | 9 | 2 | 7 |
| | | | | |
| (N)= | (69) | | (30) | |

We found it particularly interesting that applicants who settled for a form of contact very different from what they had originally sought (visiting rather than staying; supervised rather than unsupervised) were no less likely to end up with a consent order and no more likely to have a contest (table 6.3) and there were only slightly more with contested interims (6; 20%). Nor did it make much difference whether the resident parent had opposed either the principle of contact or unsupervised contact. Thus while the court may have provided the framework within which positions were adjusted, decisions were typically made away from the actual courtroom.

As can be seen from table 6.4, cases which ended by consent were typically longer than those which went to a contested final hearing, with well over a third lasting for more than a year and 10% more than two, the longest going on for four years. The key questions, then, would seem to be what was the process by which at least notional agreement was reached; why did some contact parents settle for less than they had originally sought and why did it take such a long time?

### Table 6.4: Duration of cases ending with visiting contact only by process

| Months to completion | Contested | Withdrawn | Consent | Other | All | |
|---|---|---|---|---|---|---|
| | % | % | % | % | No. | % |
| Up to 3 | 0 | 0 | 12 | 0 | 7 | 10 |
| 4-6 | 17 | 33 | 21 | 0 | 14 | 20 |
| 7-12 | 33 | 67 | 28 | 50 | 21 | 30 |
| 13-18 | 33 | 0 | 22 | 0 | 15 | 22 |
| 19-24 | 17 | 0 | 7 | 0 | 5 | 7 |
| More than 24 | 0 | 0 | 10 | 50 | 7 | 10 |
| *Minimum* | *5* | *5* | *1* | *11* | *1* | |
| *Maximum* | *22* | *11* | *48* | *36* | *48* | |
| *Mean* | *12* | *8* | *12* | *24* | *12* | |
| | | | | | | |
| (N=) | (6) | (3) | (58) | (2) | (69) | |

## Welfare reports and expert evidence

Across the whole group of cases which ended with visiting contact it was much less common for welfare reports to be ordered than in those which ended in no face to face contact, although in those which ended with supervised contact the proportion was only slightly less (9 of 11; 82%; compared with 85%). In all, reports were ordered in 39 cases (57%; 35 from Cafcass, three from Social Services) while in one case the court made use of a welfare report on the non-resident father prepared in contact proceedings relating to children of his new partner. Two cases had reports from Social Services in addition to a Cafcass report. Where reports were ordered, however, over half had at least one addendum (22 of 39; 56%). Two children were subsequently separately represented, and had a guardian ad litem.

Whether or not a report was ordered was correlated with whether serious welfare concerns had been raised, such cases being twice as likely to have a report ordered. Other factors, such as whether the resident parent was objecting to contact in principle, or seeking supervised contact, or whether the child was objecting, also increased the likelihood of a report being ordered.

Evidence from other professionals was quite rare (18 cases, 26%). Again it was mainly from health/mental health professionals, although three cases involved tests for drug abuse and one police evidence. An unusual feature of these cases, however, was that two involved multi-disciplinary reports from contact consultancy agencies. Twenty-five cases (36%) did not have a report from any professional.

Cases which ended with a consent order or agreement were less likely to have a welfare report ordered than other cases. Nonetheless just over half (30 of 58; 52%) did, Moreover, surprisingly, apart from one case which ended in a contested hearing, the cases in which a) there were reports from other professionals b) there was a referral to a specialist contact agency and c) the children were separately represented were those which ended by consent. In all 36 of the consent cases (62%) involved some form of professional input, which undoubtedly goes some way to explaining why they took so long. On the other hand it seems likely that it was that professional input which produced the eventual agreement.

Another part of the explanation for the lengthy duration of some consent cases is that at the point the application was made only 12 non-resident parents were known to be having face to face contact with their children. Re-establishing contact was therefore the first hurdle they had to overcome, before any issues about staying contact or the details of visiting contact could be decided. Such cases lasted, on average, 14 months, five months longer than those where contact was already happening. As one of the Cafcass officers we interviewed explained:

> *An awful lot of contact cases take in excess of 12 months because they nearly always start with the applicant having no contact and perhaps having had no contact for quite a considerable time. And so it very often seems appropriate to build up contact gradually. The problem I often find in practice is that if you try to rush it it breaks down and ends up taking longer.*

## Getting contact started

At the point the court application was made 52 of the non-resident parents who ended up with visiting contact were known to be having no contact with their children and around two-fifths of resident parents (22; 42%) were opposing this. A further 10 were opposing unsupervised contact.

Typically some form of contact was agreed early in the case, by or at the first (26) or second hearing (8). In most of these cases there was no record on file of how that agreement had been reached, although since all our courts had some form of in-court conciliation scheme operating with Cafcass it seem likely that this was at least partly instrumental. As our Cafcass interviewees told us:

> *We'd always be there on duty. We could talk to the parties separately, together with their solicitors, or whatever and quite often you could agree an interim position which could be tested and reviewed. In that system a lot of the cases did get sorted out. They might agree to go to mediation or they'd agree to try something and come back and see if it worked.*
>
> *When we attend the first directions appointment, quite a lot of work is put in to establishing some kind of agreed contact arrangement.*

Solicitors also referred to the role of in-court conciliation in getting contact going:

> *The Cafcass officer is usually very good at trying to establish contact at that point.*
>
> *Here we always have a duty Cafcass officer on duty so if the solicitors can't get something up and running we often pop them in to see Cafcass and they can come up with something.*

The interview material, however, also highlights the role of the other players. As one solicitor put it:

> *We put a lot of pressure on people to try and get contact under way so that Cafcass can do a proper assessment… with contact centres being so readily available (here) it's not too difficult to organise contact in a safe setting.*

Indeed where parents are represented at this point they may already have been 'worked on' by their solicitor and some may have shifted their position, if not their attitudes. Solicitor after solicitor told us how they tried from the outset to convey to resident parents the pro-contact stance taken by the court:

> *You have to be really upfront with clients. The court will order contact unless....They don't necessarily expect that.*
>
> *Certainly we would start off by advising both resident and non-resident parents that unless there is a cogent reason why contact should not take place then there should be contact in whatever form the court thinks appropriate.*
>
> *(We tell them that) the court will start from the point of view that the child is entitled to a relationship with both their parents and they are going to be*

> *looking for ways of managing that relationship in a way that is safe for the child. This is not about your rights, it is about your child's rights.*

Represented or unrepresented, when the parents get to the first appointment the general approach taken by the court will be spelt out to them:

> *(The district judges) really do try to get contact…They give little speeches before you even go into conciliation and say 'look, contact is in the interests of the child in most cases. That we encourage contact'. They give speeches all of them without fail before they go in. And they do stress 'think of the child, think of the child'.*
>
> Researcher: *And does that have any impact?*
>
> *I think it does in quite a lot of cases. Let's not forget that for most people court is a very frightening experience and when you are looked at straight in the eye and told by a district judge that contact is in the interest of the child and must be encouraged, that must have an impact before they go into mediation. It's only those few recalcitrant parents who will just look them back straight in the eye and think to themselves 'Well that's what you think, mate, but I've got other ideas'.*

Where parents are not prepared to agree any contact at this early stage, for whatever reason, the court is not able to make an order until the parties have had an opportunity to put their case and, probably, until there has been a welfare report. In 15 of the sample cases, no contact arrangements were made until professional reports were underway (6) or until after they had been submitted (11), sometimes long after. In one case contact was not established at all in the course of proceedings but was ordered after a contested final hearing.

Interim contact commonly started with a period of supervision (33 cases; 61%) often preceded by observation by the Cafcass officer, although three families moved straight from observed to unsupervised contact. Supervised contact was most common in cases in which welfare reports were ordered (70%) but it was also used in 60% of cases where contact was restarted before any welfare investigation had begun.

As one might expect, where the resident parent was initially opposed to face to face it was unusual for arrangements to be made for contact to restart at the first hearing (table 6.5). There were only six cases where this occurred (27% of 22), in half of which contact was to be on a supervised basis. In contrast, in six of the 10 cases where the resident parent was not opposed to face to face contact but wanted this to be supervised, it was agreed at the first hearing for this to start. Similarly, where neither of these applied in most cases the parents agreed to some contact at the first hearing (14 of 20; 70%) though almost half of these were to be supervised.

In a third of the cases (9 of 27) where the resident parent raised serious welfare concerns agreement was reached at the first hearing but in all but two contact was to be supervised. Where no such concerns were raised agreement was both more likely to be reached at the first hearing (17 of 25; 68%) and to involve unsupervised contact (9; 36%).

**Table 6.5: Contact re-started after first hearing by initial position of resident parent and welfare concerns.**

| | Type of contact arranged at first hearing | | | | | | |
|---|---|---|---|---|---|---|---|
| | Unsupervised | | Supervised | | None | | |
| | No. | % | No. | % | No. | % | (N=) |
| *Initial position of resident parent* | | | | | | | |
| Opposed direct contact | 3 | 14 | 3 | 14 | 16 | 73 | (22) |
| Opposed unsupervised contact | 0 | 0 | 6 | 60 | 4 | 40 | (10) |
| Neither of these | 8 | 40 | 6 | 30 | 6 | 30 | (20) |
| | | | | | | | |
| *Serious welfare concerns raised* | | | | | | | |
| Yes | 2 | 7 | 7 | 26 | 18 | 67 | (27) |
| No | 9 | 36 | 8 | 32 | 8 | 32 | (25) |
| | | | | | | | |
| *All cases* | 11 | 21 | 15 | 29 | 26 | 50 | (52) |

Getting an interim order or agreement for face to face contact, however, was not usually the end of the story. Of the 26 cases where a decision to restart contact was reached at the first hearing, for example, only one ended at that point, with six having one more hearing and another five two. On average it took four more hearings and another 10 months before the cases were resolved, although some cases went on much longer (with a maximum of 34 months) and required many more court appearances (maximum 18).

Across the whole group of 52 cases where there was no face to face contact at the outset on average cases went on for a further 10 months after the decision to restart contact was reached (maximum 39)and had four more hearings (maximum 18).

These figures partly reflect the fact that the progress of contact, even after the decision to restart, was rarely entirely smooth, with most cases (at least 27 of the 47 where the decision was not coterminous with the end of proceedings) running into problems of some kind. Of the 25 cases where the decision was made at the first hearing, for instance, but the case did not end at this point, only 12 were subsequently problem free. Then, of course, there was the question of what the final contact arrangements should be and in particular, disputes about whether contact should be supervised or be extended to staying contact.

What about the non-resident parents who were in a more advantageous position at the start in that they were at least having face to face contact with their children? As noted earlier, their cases tended to be much shorter. Indeed half (8 of 16) completed within six months, compared with only 25% (13 of 52) where contact had to be established. Only five cases went on for more than a year and one for more than two, the latter involving a dispute about both overnight stays and supervision. Contact in these cases in the main proceeded uneventfully, with only four cases running into problems. However a good proportion (10) involved disputes about either staying contact (4) or supervision (6).

Having presented an overall profile of the 69 cases ending in only visiting contact, we focus in the next sections of this chapter on the 37 contact parents who did not achieve what they had sought at the point they made their application to court.

## Contact parents whose initial objectives were not realised

All but two of the applications which ended in only visiting contact (67 of 69) were made by non-resident parents[19]. Typically either the applicant had only sought visiting contact (23) or their expectations were not known (19). However 25 of the 67 had originally applied for staying contact, five of whom not only did not get it but ended up with supervised contact, as did a further four applicants. An additional eight applicants, while obtaining the *form* of contact they had originally sought, were known not to have achieved everything they had asked for in terms of either frequency or duration.

Of the remaining parents, there was only one who was known to have got exactly what s/he wanted and a couple who achieved at least something of what they sought (eg unsupervised contact). In most, however, there was not enough information about what the contact parent was seeking at the outset to make an assessment of the extent to which they achieved their detailed aims.

None of the cases which ended in visiting contact rather than overnight stays involved unsuccessful applications for enforcement. Although there were nine cases with extant orders or agreements, only three applications were brought to give effect to the arrangements set up previously. In two the order was confirmed, one having a penal notice attached as the applicant had requested. In the third case there was no information on the court file about the terms of the original order, made two years previously.

### Parents who wanted staying contact but only got visiting

Twenty-five non-resident parents who got visiting contact only were known to have originally wanted overnights. Since 17 of them, however, were not even having face to face contact at the point they made their application, this might be seen as somewhat ambitious. In nine of these cases either the resident parent (8) and/or the child (3) was opposed to any face to face contact. A further three resident parents wanted supervised contact only. In only five of the 17 was the point at issue merely the question of overnights.

Where contact was already occurring (8) the issues tended to be narrower. Nonetheless even here there were two cases where the resident parent was opposing unsupervised contact.

Five of the 25 non-resident parents who had applied for staying contact but only got visiting never moved beyond supervised contact. We shall look at these cases in the next section. Of the remaining 20, 16 were resolved by consent and two, while not agreed, were not actively contested at the end of the day. In one of the two cases where there was a contested hearing the contact parent had already decided not to pursue staying contact by this point. Thus of all the cases in which the applicant got unsupervised visiting contact rather than the staying contact s/he had sought, there was only one (case 808, below) in which the issue of overnights went to adjudication. Moreover it appears to have been only one of many issues remaining to be settled and may not have been the central one.

[19] One of the exceptions was brought by the resident parent who wished to prevent unsupervised contact; in the other residence changed.

Case 808. The child was 4. Her parents separated when she was 15 months old. Father described contact as always difficult, including a period 2 years previously when it was suspended for 6 months. Contact then resumed and continued for about a year before being stopped again. According to mother this was because the child was not being properly looked after, was being driven without a seat belt, she was sometimes left with a babysitter; father was unreliable about collection times and he had been aggressive to her in front of the child. According to father it was because mother had unilaterally reduced his contact time and he wanted it extended and for overnights to resume.

By the time father applied to court he had not seen his daughter for 8 months, having initially decided to give up trying to get contact and then having problems getting legal aid. Mother then opposed contact because of the lapse of time, the fact that the child was having to adjust to other changes in her life – mother's marriage, a new baby, going to school, and that it was '*no time to be pushed out to a stranger like father'*, who had failed to demonstrate his commitment.

After a contested interim hearing the court ordered 3 sessions of contact to be observed by Cafcass. On the first 2 occasions the child was resistant and had to be persuaded to come into the room, and a further 3 sessions were ordered, at the end of which the Cafcass officer was satisfied that the child was comfortable with father and he was relating to her appropriately. Mother, however, opposed contact moving to father's house and sought an order for contact at a contact centre. The court refused this and ordered weekly unsupervised visiting contact beginning with $2^{1/2}$ hours and extending to 6 hours. At the final hearing the parents still seem to have been in dispute about the quantum of visiting contact, the logistics of it and whether there should be a parental responsibility order and it is not clear whether the issue of staying contact was specifically addressed. Although the magistrates' reasons mentioned staying contact as one of the matters to be decided they did not explain why they were not making an order for this.

Of the 19 cases which did not go to a contested hearing on staying contact there were nine where it seemed clear why the applicant did not pursue the issue:

- The child persistently refused (3);
- Medical reports advised against for the immediate future because of the child's special needs (2);
- Psychiatric reports concluded that forcing the resident mother to allow staying contact would adversely affect her fragile mental stability and therefore on her capacity to care (1);
- Staying contact had been agreed provided father was drug free. A hair test proved he was not (1).
- A welfare report advised the non-resident parent not to pursue staying contact because of the lack of trust and co-operation between the parents (2).

In the remaining cases any 'explanation' can only be tentative. They appear, however, to fall into two groups.

In the first group (4 cases), visiting contact was established at an early stage and proceedings then resolved quite quickly (or in one case immediately) contact having progressed smoothly in the interim. None of these cases had welfare reports and none raised any serious welfare issues. It seems likely that the contact parent had decided (or perhaps been advised) not to 'rock the boat' but to be satisfied for the moment with visiting contact and hope that in due course it would progress naturally.

In two the age of the child was likely to be relevant, with one not yet a year old (and having a very young father who had never lived with or cared for her) and the other just three.

In the second group (6 cases) achieving even interim visiting contact had been much more difficult. All but one of the cases in this second group lasted for over a year, with one going on for two and another for no less than four. Thus, while there was only one case in which it was explicitly recorded that the contact parent had decided to drop the application for overnights, it would not seem unreasonable to assume that the others had also recognised that they were not likely to achieve this.

### *Could the process or outcome be seen as unfair to contact parents who got visiting contact rather than the staying contact they had sought?*

Cases where no serious welfare concerns were raised

In 11 of the 20 cases where the non-resident parent got unsupervised visiting but not the staying contact they had initially applied for serious welfare concerns were not being raised as a reason why there should not be staying contact, even though in a few (such as case 514 below) such concerns formed part of the background to the case. On the face of it, therefore, all of these might be seen as having unfair outcomes.

This could certainly be argued about the only case which went to a contested hearing (case 808, above). Perhaps if the visiting contact ordered at the final hearing had acted as an effective platform from which to progress it might have been seen as a justifiable necessity. In the event, however, it appears that when father later asked for more contact mother's response was to stop it altogether. Five months later the case was back in court.

In another case (713 below) it would be harder to argue that the *outcome* was plainly unjust, since although father did not present a physical risk to the child there were clearly issues about his unreliability which had caused considerable distress to the child. However in our view the *process* by which that outcome was reached was open to criticism. While the resident mother had agreed to restart contact she had never complied and failed to turn up to any subsequent hearing, including the final one, at which the court made an order for visiting contact. In these circumstances it would probably have been fruitless for father to persist in seeking an order for staying contact. However we do not understand why the court thought it was worthwhile making a *final* order, even for visiting contact, since without continued oversight the chances of mother complying must have been negligible. Indeed the case was back in court with a breach application within a month. Moreover mother's non-attendance at earlier hearings does not seem to have been tackled.

Case 713. The child was 7. Her parents separated when she was about a year old and a court order was made for contact. After mother moved away about a year later all contact ceased, father admitting having '*opted out and tried to forget her'* for 3 years. He then got back in touch and contact resumed, only to cease again after 18 months, leaving, according to mother, a '*heartbroken little girl'*. When the family returned to the area contact was again restarted, at father's request, but did not take place consistently. Further contact was refused because, in mother's words, *'she is not being picked up and put down like some toy when he chooses*'.

The parents agreed to restart contact after in-court conciliation at the first directions appointment, and an order was made for fortnightly visiting contact, with father to begin the process of the two getting to know each other by sending letters and cards. No cards were received, even though it was Christmas time. Mother refused direct contact on the first occasion, contacting the court to say she had withdrawn her agreement. She was warned that father could bring an action for breach and if he did she could face a fine or prison. What happened then was unfortunately not well recorded but mother alleged father did not turn up on some occasions and on others she acknowledged refusing because the child had other activities or she had *'forgotten'*.

At the next hearing the court ordered a welfare report. The Cafcass officer saw the child, who was reported to be willing to give her father another chance, although apprehensive about being let down again and recalling the previous occasions when this had happened with '*sadness and some vigour - He kept lying to me… didn't say he was sorry… he didn't care enough'*. The officer recommended that contact resume at a contact centre, subject to a ruling on paternity, which mother was now disputing.

The court ordered DNA tests. Mother did not comply. She then did not turn up to the next hearing at which the court made a final order for contact, on the grounds that paternity had not previously been disputed and there were no cogent reasons for denying contact.

In four of the remaining nine cases without serious welfare issues the parents agreed to restart contact at an early stage in proceedings and the case was then fairly quickly resolved by agreement. Hence although the contact parent may not have got the staying contact they originally sought, they may have been reasonably satisfied with both process and outcome. In a further two, again quite brief cases, the non-resident parent agreed not to pursue staying contact as the result of specialist advice on the implications of the child's medical condition. In both, although there was no issue about the father's suitability for contact, any unfairness was clearly outweighed by the interests of the child.

> One child (aged 6) was autistic; the paediatrician advised that for the moment he needed to spend most of his time in the place he regarded as his home.
>
> In the other case the child (aged 4) had developed acute and severe physical symptoms, which could be organic or stress-related. Since they seemed to worsen when contact was due the father agreed not to press for staying contact until further investigations were carried out.

In two cases the children were resolutely opposed to staying contact. Indeed one child was reluctant to see her father at all and at the end of the day agreed only to extremely limited contact. In each the fathers alleged that the child was being alienated by the resident mother while according to the Cafcass officer, the children had become aligned with mother because of the parental conflict. These children were clearly struggling to cope with their feelings about their rather different situations and while the court process was effective in at least getting some visiting contact going, pursuing staying contact would probably have been counterproductive. The outcomes may have been unfair to the non-resident parent, but in our opinion they were understandable and justifiable in terms of the immediate interests of the children, and at least kept open the prospect of contact eventually progressing.

Case 201. The child was 7. Father had originally opted out of staying contact because of his work commitments and then, after contact broke down, on his own admission made no effort to contact her for 2 years. The child was still having counselling to help her come to terms with her feelings of abandonment by a father she was said to have '*adored*' and had since tried to forget. At the same time she also claimed father had only brought the application to get at her mother who she thought would be upset if there was contact.

Interim contact at a contact centre was agreed at the first hearing but the child consistently refused to move on to unsupervised visits even though her brother was going quite happily. A welfare report was ordered which suggested reducing the amount of expected contact and possibly moving it back to the contact centre for a period, and making a referral to CAMHS (Child and Adolescent Mental Health Services). The parents then agreed an interim arrangement whereby father would take the child to and from her judo class once a fortnight. This was tried for two months, at the end of which the child had not shifted her attitude at all. The interim order became the final order.

Case 514. The child was 8 and had 2 siblings, one older, one younger. The parents had separated the year before after extensive domestic violence. However the resident parent was not putting this forward as an obstacle to contact and up to 7 months before proceedings there had been regular staying contact. According to father mother stopped contact when she found out he was in a new relationship. According to mother the children had become stressed after contact, fighting among themselves and being defiant and rude to her. The eldest child also did not get on with one of the children of father's new partner.

At the first hearing contact at a contact centre was agreed, moving, 5 months later, onto visiting contact and then staying. This then foundered, with the eldest child refusing all contact and the index child saying she no longer wished to stay; she wanted contact only during the day and she wanted to be able to spend time with her father on her own, away from his new family, which now included twin babies as well as his new partner's three children. The Cafcass officer considered that apart from feeling marginalised the children had been drawn into parental conflict, with both parents making derogatory comments about the other, and had responded by aligning with their mother. Father seemed to be planning to force the issue by calling the children to give evidence in court but after reading the (third) welfare report, which advised that continuing with proceedings might only cause the children's hostility to become entrenched, decided to withdraw. A consent order was made for visiting contact at least once a month for the index child and her younger sibling, no order being made for the older child, who remained resistant to any contact.

The final case in this group where serious welfare issues were not being raised as an objection to contact was rather puzzling and, to us, somewhat worrying, since the child's periodic resistance to contact and his sisters' allegations about father's behaviour do not appear to have been adequately explored. Certainly it was not a case where it could be said that the outcome was plainly unfair to the contact parent.

Case 403. The index child was 4. His sister (13) and a stepsister (15) were also initially subject to proceedings. The parents had separated two years previously. Staying contact, at the paternal grandmother's, had not worked out because the child did not settle, but visiting contact had been established. Contact stopped after the eldest child had a row with her stepfather (the index child's father), after which the other children also refused to go.

Father withdrew his application in relation to the two girls, who remained strenuously opposed to contact because of what they described as his violence to their mother, bad temper, controlling behaviour and criticism of mother and her family. Indeed at one point the older child said her concerns were so great that if her sister was forced to go to contact she would go too to protect her. Mother's statement, however, (not prepared until late in proceedings) did not mention violence, merely stating that father could be very hostile at handovers; nor was there any reference to the girls' allegations in the welfare report.

At the first hearing the parents agreed to contact being observed by Cafcass. The child was initially apprehensive and had to be persuaded to see his father but soon settled; visiting contact was restarted and gradually increased. The issue then became staying contact. Mother's position was that she was not opposed to this in principle but it was not appropriate at this point since the child sometimes had to be '*bribed*' to go even for visits; his behaviour before and after contact was disturbed – bedwetting, nightmares, sleepwalking – and father did not stick to the special diet required because of the child's digestive problems.

Father took the view that any reluctance on the child's part was entirely due to mother's '*malign influence'*. The Cafcass officer, who had again observed contact and considered the child was perfectly comfortable, was somewhat mystified. She had found it difficult to get the boy to talk about his feelings and concluded that '*it appears fairly certain that with his sisters refusing to see father, the atmosphere in the home is probably not one which will be favourable to him'*. Oddly, the child's statement that his father '*hurts him and makes him angry'* was reported but not commented on.

The welfare report concluded that while there was no reason why visiting contact should not take place, the question of staying was '*more vexed'* and recommended that since mother was not opposing overnights in principle, no order should be made on that but that the possibility of staying contact should be left open at each visit. A consent order was made for weekly all day visiting contact, the arrangements to be varied by agreement.

<u>Cases where serious welfare concerns were raised</u>

All the remaining nine cases involved some kind of serious welfare allegation or concern: domestic violence (4); child protection (3); drugs (4); alcohol abuse (3) or fear of abduction (3), two of which involved concerns about removal from the U.K.

There appeared to be only one, however, in which those concerns were specified as the reason why staying contact was not achieved and in our view the father cannot really have been surprised at the outcome.

Case 205. This was a single issue case involving very young parents who had never lived together and who separated when the child, now 2, was still an infant. Father had had frequent visiting contact and while he lived with his parent's mother had also allowed staying contact. Father then got his own accommodation and wanted staying contact to resume. Mother said she would agree provided father proved he was drug-free as he claimed. Two hair tests proved he was still using illegal drugs; visiting contact only was agreed.

This was one of three cases in which the resident parent had never opposed direct contact, only this being extended to staying. In the second case too, we think the father must bear some responsibility for the outcome because of the violence he had perpetrated during the marriage (which ended with a non-molestation order). Although this was not cited as a reason for opposing all contact it was said to have adversely affected the 13 year old child, who remained obdurate about staying contact throughout the proceedings. A consent order was made for visiting contact after the Cafcass officer advised that the most important thing for the moment was '*to concentrate on re-building the father/child relationship to the position where she wants to stay'.*

In the third case in which it was only the staying contact which had been opposed, professional opinion was that mother's extreme anxieties (chiefly about the child being exposed to risky adults and poor care because of father's unusual living arrangements) were not justified by any genuine danger. However no progress was made in moving contact on. A psychiatric report was ordered after mother began to talk to the Cafcass officer about her childhood experiences of sexual abuse. This reported that mother was suffering from significant depression and anxiety and would not be able to tolerate staying contact until she had therapy. To force staying contact could result in significant impairment of her parenting capacity. Father withdrew his application. Clearly, given that father failed to achieve staying contact not because he did pose a risk to the child but because the mother genuinely thought his circumstances did, or at least had convinced professionals of that, this case belongs more to the 'unfair to the contact parent' end of the spectrum. However it is unclear to us what else the court could have done, given the professional advice as to the likely impact of forcing the issue on the mother and the effect of this on the child.

In the remaining six cases the resident parent had initially opposed any direct contact and this had been achieved usually only after considerable persistence by the non-resident parent, various professionals and the court.

At the 'unfair' end of the spectrum we consider there were two fairly clear examples, one involving a resident father, the other a resident mother.

Case 423. The parents separated after what mother described as years of mental and physical abuse. The two oldest children remained with father, the younger ones (the index child aged 4 and his brother aged 12) went with mother. Two months later the younger children were also living with father, in circumstances which were disputed, mother claiming that father had refused to return them from contact, father that mother had left the children with maternal grandmother, who insisted father collected them. Mother went to court seeking residence, with staying contact as a default.

Father argued that the younger child had not been particularly affected by mother's absence and never asked for her. He opposed contact on the grounds that he '*had a bad feeling'* about
mother's new partner and expressed fears that the child would be abducted and taken abroad, where this partner had a holiday home. He slowly, and very reluctantly, shifted his position from no contact to supervised contact to visiting contact via welfare reports, observed contact and an independent assessment by a contact agency which recommended shared residence, the child spending every weekend with mother. The report was highly critical of father's attitude, questioned his ability to put the child first and suggested that he was using the child to get back at mother for leaving him. It also suggested father needed therapeutic input to address anger management issues. There were no criticisms of mother, who was

considered appropriately child-focused. Despite these very clear conclusions, mother decided not to pursue residence or staying contact and an agreed order was made for weekly visiting contact. Mother even wrote thanking the court, and the professionals involved for their '*hard work and consideration'*.

Case 631. This was one of the most intractable cases in the sample. The only serious welfare concern raised by the resident mother to justify her opposition to contact was her fear that the child (aged 8) would not be returned, although she did allege that father would not be able to cope with the child for any length of time, that he had used cannabis in the past, and that he would fail to show commitment. Professional opinion was that mother's views were rooted in her feelings about the separation and coloured by the contact experiences of her other children, whose father had let them down badly. The child started off saying he very much wanted contact but was aware that this would upset his mother; later, in the face of the continuing conflict, he became more resistant.

The case lasted 4 years, had multiple Cafcass reports, a psychological assessment, a period in a contact centre, a period of indirect contact, a referral to a specialist contact agency and finally separate representation for the children. Contact started and stopped on several occasions. The court issued penal notices to compel the resident mother to attend court and to comply with an interim order for visiting contact. At the end of the day father, who had shown remarkable persistence and flexibility, gave up trying to get staying contact and the case was resolved by consent.

In contrast in one of the other cases it was evident that the Cafcass officer had been dubious about recommending even visiting contact because of concerns over father's violence and in particular how he would cope with a child with a behavioural disorder. She seems to have done so largely because while the child (who was 9) had fears about his father (and vividly described the domestic violence he had witnessed) he also remembered some good times and wanted to see him. Contact progressed slowly from the Cafcass office to a contact centre and then to unsupervised, ending up with a full day a fortnight, even though the father never undertook the anger management counselling which had been recommended. By the final hearing the question of staying contact had been dropped and father also decided not to pursue additional contact. We do not consider this outcome was plainly unfair to the non-resident parent.

The three remaining cases fall somewhere between the 'unfair' and 'plainly not unfair' end of the spectrum. Two involved allegations of domestic violence. Since the allegations were denied, there were no findings of fact hearings, and no other corroborative evidence, it could be argued that all these could be characterised as 'unfair'. Both, however, raised serious question-marks in our minds. In each, finding of fact hearings had been listed but cancelled when the resident parent agreed to supervised contact. In one contact remained supervised (by the paternal grandparents) throughout proceedings but the wording of the final order, which conceivably could have been an error, was for unsupervised contact. In the other, in which there were allegations of physical and emotional abuse of the child as well as persistent domestic violence, mother sought to return to supervised contact after the child, who was four by this time, alleged father had hit her. A Social Services investigation was inconclusive; unsupervised contact resumed. Father withdrew his application for staying contact after the Cafcass advised that for it to work the parents needed to be able to cooperate more effectively.

In the final case[20], in contrast, there was no dispute about the facts relating to father's past behaviour, which involved abuse of drugs and alcohol and a substantial criminal record. A series of welfare reports, however, dismissed mother's 'historic' concerns and her argument that the child's primary relationship should be with his stepfather. The final order for reasonable, rather than defined, contact, was said to mark the progress that had been made in the parents' relationship and it is conceivable that father may eventually achieve the staying contact he had sought.

In the next section we look at another group of cases where non-resident parents did not achieve the *type* of contact they had originally sought, in that they ended up with supervised contact.

## Parents who sought but did not achieve unsupervised contact

Nine non-resident parents (all but one of them fathers) ended up with supervised contact having sought unsupervised or even, in five cases, staying contact[21]. At the point they made their application none were having unsupervised contact. Indeed six were not having any contact at all while one had only indirect contact and two had supervised contact. Six of these cases involved serious welfare concerns/allegations: domestic violence 4); child abuse or neglect (3); drug abuse (3); alcohol abuse (2); mental illness (2); and parenting capacity limited because of learning difficulties (1).

Five of the resident parents in these cases had been opposed to unsupervised contact from the start of the case, and one had opposed any contact. One was originally only opposing staying contact and in two the position of the resident parent was not clear. None of these cases went to a contested hearing, two being withdrawn and seven ending in consent orders.

Of the six cases involving serious welfare issues five were withdrawn/agreed following adverse professional reports. Four of these were based on the risks to very young children because of, variously, the contact parent's continuing drug use (2) (plus, in one case, poor parenting skills); personality disorder (1); and history of sexual abuse of other children(1). In the fifth the child was 11 but there were multiple welfare concerns about father and the child was afraid to be left on his own with him. He agreed to have contact at his grandparents and to see his father there.

### *Could the process or the outcome be seen as unfair to the non-resident parent*

We do not think it would be possible to argue, in any of the six cases involving serious welfare concerns, that either the outcome or the process was unfair to the non-resident parent. While in principle the lack of any finding of fact hearings in the four cases involving allegations of domestic violence might be surprising, in fact it was not the central issue in any and in each the key issues were addressed with appropriate professional input.

Case 928. The parents separated when the child was nine months old. Father brought an application for shared residence/staying contact, claiming he had taken a major share in the child's care. Mother refused unsupervised contact, claiming to be afraid of a man she described as '*threatening, suicidal, psychotic and domineering'*

[20] This case, number 404, is considered in more detail in a later section.
[21] This excludes applications brought by resident parents or where residence changed.

and who abused alcohol. The parents agreed a period of supervised contact at a contact centre, which then progressed to contact in father's home, supervised by a third party agreed by both parents. A psychiatric report was prepared on father, which concluded that he was suffering from a personality disorder and contact should be supervised, at least for the foreseeable future.

In the sixth case the father refused to cooperate with the Cafcass enquiry and withdrew his application for unsupervised contact. There was therefore no opportunity to test mother's allegations of continuing drug use and violence against his new partner in the presence of the children, both of which father denied. Indeed although he had served a prison sentence for the use of illegal drugs, prior to the case coming to court he had taken two hair tests which showed he was drug-free, but mother still refused unsupervised contact. It is unclear whether his decision not to pursue the application was because the court ordered a further test, or because Social Services enquiries revealed he was a Schedule 1 offender.

In two of the remaining three cases where no serious welfare issues were raised, it was impossible to ascertain from the information on file why the resident mothers were insisting on supervised contact, and therefore to judge the 'fairness' of the outcome. The children, however, were very young (10 and 12 months) and, since the parental relationship had broken down very soon after their birth, although there had been some contact there would have been little opportunity to establish a relationship. Neither case went to a contested hearing or even a full welfare report. One settled at the first directions hearing, with an agreement for contact starting at a contact centre, then moving to mother's home; the other in the course of the welfare report, parents agreeing that mother would be present during contact.

In the final case, however, there did seem to be an element of unfairness.

Case 702. The parents had never lived together and their relationship ended when the child was still a toddler, although precisely when was disputed. There had been some contact, which ended after mother refused to let the child visit father at his home, which was a farm, because, according to her, the conditions there were unsafe and father was not sufficiently attentive to the child's safety. According to father this was because mother had discovered he had a new relationship.

The Cafcass officer agreed there were safety issues, advised father on what he needed to do to address them and recommended that, since there had been a substantial gap in contact, it should restart at mother's home, in her presence. No contact took place: father was reluctant to go on his own, fearing, he said, that mother would '*set him up'*; mother refused to have anyone else there. A second welfare report outlined the possible options for interim contact: 1) visiting at mother's home by father alone or accompanied by a relative; 2) visiting contact at father's home, accompanied by mother or a relative; 3) contact at a contact centre and 4), the Cafcass officer's preferred option, contact at a play centre. Mother refused all the options other than that father come to her house, unaccompanied. Father gave in and agreed to this and although the welfare report's recommendations had only been for interim contact, to be followed by a court review, a final consent order was made in these terms.

### Parents who did not get the frequency or duration of visiting contact they initially asked for

There were eight non-resident parent applicants, all fathers, who were known not to have obtained either the frequency or duration of visiting contact they had originally sought:

- One ended up with the number of hours of contact wanted but concentrated in one visit a fortnight rather than split into weekly visits;
- One got the frequency sought (fortnightly) but no increase on the three hours he was already having;
- Three got neither the frequency or duration sought, the greatest discrepancy being between the three full days a week sought and the four hours once a week obtained;
- Three did not specify the duration wanted but since they only got a couple of hours at a time and did not achieve the frequency sought it seems reasonable to suppose they would also have been disappointed with the overall amount.

Since none of these cases had a contested hearing on the question of quantum, nor were there any professional reports commenting on this issue, it is impossible to be sure why these parents settled for less than they had originally sought. However since in all but one they had had to overcome the resident parent's objections either to any contact at all (4) or to unsupervised contact (3), and that at the outset only one was having any contact and that was supervised, it is probable that they decided, or were perhaps advised, to be satisfied with the considerable amount they had achieved. It is possible, indeed, that the question of quantum never became an active issue.

The single case which was disputed only on the question of quantum essentially settled at the first hearing and no change was made at the review. Two other cases also settled quite early (one at the first hearing, the other within 3 months of the application) without a welfare report having being ordered and a third settled in the course of the first welfare report (7 months). The remainder involved more prolonged proceedings (11 to 29 months) or, in one case, went to a contested final hearing on the question of supervision.

### *Could the process or the outcome be seen as unfair to the non-resident parent?*

Given the lack of information on the issue of quantum in cases ending in only visiting contact, it is difficult to judge whether the non-resident parents' failure to achieve what they had originally sought could be seen as unfair.

<u>Cases where there were no serious welfare issues</u>

There were three cases in which no serious welfare issues were raised as objections to contact in these proceedings[22]. In the first, the father got the same *amount* of contact as he had sought though not the *frequency*. Since this was an enforcement case, and the court also attached a penal notice to the (varied) order, the father may have been quite satisfied with the outcome. In the second, the father got weekly

[22] In one of these, however, there had been previous proceedings in which the mother had alleged domestic violence during the relationship and aggression at handover. The welfare report's recommendation for a finding of fact hearing had not been acted on.

rather than twice weekly contact. However this had been achieved against mother's initial opposition to any contact, on the grounds of his alleged previous unreliability, and it seemed clear from the limited information on file that contact was going well and was likely to be increased by agreement. Hence the father may well have been fairly satisfied with what he had achieved. The third was more questionable and might be regarded as unfair. It did settle early, after in-court conciliation, but of course there is no way of knowing whether this was because he was told that his aspirations were unrealistic.

Case 371. Father was seeking daily contact with his two children, aged 3 and 2. The parents had been separated for about two years, during which time, father claimed, he had first had sole care of the children and subsequently had them for a period every day[23] at the home of a relative, his own accommodation being unsuitable. This arrangement broke down, father was seeking to re-establish it. Instead he got five hours contact every Saturday and Sunday.

Cases with serious welfare issues

All the remaining cases involved allegations about serious welfare issues - domestic violence (3); child abuse or neglect (4); drug abuse (1); alcohol abuse (3); mental health (2) and abduction (2) – with four covering more than one area of concern.

There were no finding of fact hearings in any of these cases, nor were there tests to establish drug or alcohol abuse. In that sense it could be argued that the process was potentially unfair, or perhaps, given that the outcome was in each case unsupervised contact, that the allegations were regarded as unfounded. Close analysis of the cases, however, does not support either of these assumptions:

> In two there was abundant evidence to support the key concerns;
> In a third, the child's allegations of physical mistreatment were investigated by Social Services and although no action was taken this was because mother was seen as able to protect the child through the private law proceedings;
> In one there had been previous orders for first no contact and then indirect contact only because of domestic violence;
> In the fifth, the undertakings the father gave (not to use drugs or alcohol before and during contact and not to take the child to his house) suggest that the mother's concerns were not regarded as groundless.

It is perhaps going too far to say that the fathers in these cases were lucky to have achieved what they did, but we can easily imagine at least some ending up with only either supervised contact or even no direct contact at all. Indeed in one case there was some ambiguity as to whether the father was to be allowed to have the children on his own and good reasons related to safety why he should not and we did have considerable doubts as to whether the outcome was in the children's best interests.

Case 929. There were three children, aged 15, 12 and 9. There was a history of domestic violence and child abuse, a previous order for no contact and an extant order for indirect contact, although welfare reports in both sets of proceedings had strongly recommended no contact. Indeed the welfare reporter in the last set had recommended an order that father should be required to seek leave before making any further application and concluded that his

[23] In the absence of a statement from the mother, or a welfare report, it was not possible to corroborate this.

motive for bringing proceedings was primarily to harass mother. Father had breached both orders by turning up at the children's home; this only ceased when the family moved from the area. Indirect contact continued.

Father was now seeking direct contact. The children were adamant they did not want to see him – and the index child, who was 12, actually wrote to the court to that effect – because of father's previous behaviour and his harassment of them through the court system:

> *I am writing to you to say that my father is a big liar. He tells the court that he never hurt us but he is lying (sic) he always hit me around the head and threw my sister across the room and cut her back open, my brother always got kicked, shoes thrown at him and he shouted at him so much and beat him so he wet himself. I do not wish to see any more court welfare officers anymore as I have already seen two of them. So Judge don't let him have contact with us because we do not want to see him ever again.*

Despite the children's views, mother reported that prior to proceedings, against her better judgement, she had decided to offer monthly supervised contact in the hope of avoiding the emotional and financial costs of further court proceedings. (Mother was not legally aided; father paid no child support). Father, who was legally aided, refused. The case settled at the first hearing, with father accepting there would be no contact with the oldest child and even more limited contact than he had been offered with the younger children, four times a year, in a public place, and 'supported' by mother and her partner.

In contrast, in a second case, it seems that the father succeeded in getting unsupervised contact because observation of supervised contact indicated that the children's initial fears (and perhaps also mother's) had been reduced. Nonetheless there was substantial evidence to support those fears.

Case 1032. The index child was 6 and his brother was 3. The parents had separated five months before, after a tempestuous relationship, with at least one previous separation. In the course of this the older child had been warded because of father's alleged threats to remove him to his own country of origin. Father had a history of mental health problems and there was evidence of substantial domestic violence, witnessed by the children, unacceptable forms of physical chastisement and emotional abuse. According to a letter to the court from a child counsellor: '*they disclosed father used to hit them round the heads and pull their ears back if they were noisy at home. They have drawn pictures of him shouting as he used to shout most of the time. They feel happier without him at home*'. Nonetheless mother had agreed to contact, which she stopped only after what she claimed to have been attempted rape, though father said he had misinterpreted her behaviour towards him.

Father brought proceedings claiming that mother intended to remove the children from the jurisdiction. At the first hearing contact centre contact was agreed, the children having told their counsellor that they were willing to see father again but only if someone else was there '*because they are scared he will capture them and take them out of the country'*. Both parents gave undertakings that the children would not be taken out of the jurisdiction; father additionally undertaking not to assault or harass mother.
Supervised contact went well and after 9 months the parents agreed that contact should become unsupervised, with handovers to be accomplished at the home of the maternal grandparents.

In a third case unsupervised contact seems to have become possible through a change in circumstances.

Case 118. The child was 8 months old at the start of proceedings. The parents had separated just after the birth and there had been twice weekly contact until mother became concerned about father's mental health and the care he was providing. Father also had an older child by a previous relationship who had been accommodated by the local authority and then placed with grandparents because father was unable to cope with him.

Supervised contact at a contact centre was agreed at the first hearing. The welfare report recommended a psychological assessment which suggested that father undertake counselling and that contact could move out of the contact centre but should be supervised by the paternal grandparents. The Cafcass officer, however was concerned that the grandparents would not be able to provide an appropriate level of protection because they did not see the need for it. Father completed a course of counselling and acquired a new partner, who was assessed and judged a suitable person to supervise contact. This was trialled and the case concluded by consent although it appeared from the case file that some issues were still contested at the final hearing.

## Contact achieved against the opposition of the resident parent respondent

Most of this chapter has focused on cases in which contact parents did not achieve what they sought at the outset (37 of 67; 65%). In 22 of the cases which ended with visiting contact, however, the resident parent respondent had originally been opposed to any face to face contact. In a further 10 they had unsuccessfully sought supervised contact. We conclude this chapter, therefore, by looking at these 32 cases (48%).

### Resident parents who initially opposed any face to face contact

In most of the 22 cases in which the resident parent was opposing direct contact (15; 68%) the file contained allegations or concerns about serious welfare issues in relation to the contact parent: domestic violence (9); child abuse or neglect (6); drug (3) or alcohol abuse (6); mental illness (4); fear of abduction (7). These cases also tended to involve multiple concerns, with only four revolving around a single concern, the average being 2.4, with a maximum of five. Finally, in four of these cases there were indications of additional concerns in the background. Thus there was reference to domestic violence in two cases in which it was not being put forward as a reason for opposing contact, with one case making mention of mental illness and one of abduction.

The fact that no serious welfare concerns were recorded as an objection to contact in the remaining seven cases, moreover, does not necessarily mean that there were none. In fact in one case (361, below) there had clearly been welfare issues in the past. In other cases, particularly those which settled very quickly and/or there was no welfare report the documentation could be very scanty, so all we can safely say is that there was no indication on file of welfare issues. Indeed in four cases it was impossible to establish what the mother's objections to contact were.

The remaining three cases in which there was no indication of welfare concerns on file were quite different, although the common thread was the child's alleged unhappiness with the prospect of contact. Two of these cases, both of which concerned the father's alleged unreliability, have been described earlier in this chapter (case 713 and 808). The third case had had two previous court orders, the last one made only eight months before.

Case 361. The parents separated when the child, now 6, was 8 months old. The first set of proceedings ended with a consent order for one day a fortnight visiting contact, the father having, reluctantly, withdrawn an application for overnight contact. This foundered and 18 months later father brought the case back seeking enforcement. The order was varied to provide for shorter periods of contact but on a more frequent basis. The welfare report's recommendation that there be a finding of fact hearing on mother's allegations of domestic violence during the relationship and aggression at handovers was not acted on. Eight months later father was again back in court, aggrieved at having had no contact for the past 3 months:

> *I feel that it is time for the courts to show equality in this. It has been pointed out that fathers have as much a right to see their children as mothers. This case has disproved that theory. It is very frustrating and upsetting for men as well as women when they cannot see their children growing up. All I am asking for is the opportunity to be a father to my daughter again.*

Mother's position, as it had been in the previous proceedings, was that it was the child who was reluctant to go for contact and she was not prepared to force her.

We shall look later at how the court dealt with these cases. First, however, we examine how the court addressed the potentially major issues in cases where the resident parent's objections, as voiced in the sample proceedings, involved serious welfare concerns.

### *The assessment and management of alleged risk*

As noted above, many of the 15 cases in which any serious welfare concerns were voiced by the resident parent had issues in more than one area. Of the nine cases with allegations about domestic violence, for instance, there were also concerns about the contact parent's treatment of the child (5); alcohol abuse (4); fear of abduction (4); mental illness (3) and drug abuse (1). Indeed there was not a single case where domestic violence was the only allegation. Because of this overlapping of issues it would be too repetitive to examine how each of these concerns was addressed separately. We shall therefore look first at all the cases involving allegations of domestic violence, then examine the rest.

*Cases involving allegations of domestic violence*

At the time the application was made none of the children in these nine cases were having face to face contact. By the end all but one was expected to have unsupervised visiting.

In the main the court seems to have taken quite a cautious approach to restarting contact. In five there was no contact until after there had been a welfare report and even then in all but one it resumed on a supervised basis, as it did in all the cases where it started earlier.

Most cases, indeed, were primarily managed through a combination of welfare reports (6) and/or supervised contact (9). The involvement of other professional expertise was rare (2 cases) and although four cases involved allegations of drug or alcohol abuse no tests to establish the validity of these concerns were ordered. There were only three cases where the contact parent gave undertakings, one of which related to domestic violence/harassment, two to alcohol abuse.

Perhaps the most surprising finding to us was that none of these cases had a finding of fact hearing, even though there were only two in which the allegations were either admitted or proven. Although hearings were listed in two cases each was cancelled after the parents agreed to restart contact on a supervised basis. In the remaining cases the allegations were denied but not tested. In one the father was prepared to give a non-molestation undertaking at the start of the proceedings but continued to deny the allegations so the issue remained unresolved.

While clearly not a substitute for a finding of fact hearing, a welfare report should, in theory, at least ensure that some investigation is conducted into the welfare issues. It was, therefore, surprising to find that three cases had neither. All involved at least one child under the age of five and multiple welfare issues. Each of these gave us cause for concern, because of the possible risks involved but the most worrying was the case described below.

Case 319. The parents separated 9 months before proceedings started, when the index child was less than a year old and her brother just 4. There had been no contact since then. Mother was underage when she started the relationship with father, who was considerably older, and according to her statement, was subjected to repeated and serious violence almost from the start, for which she had some supporting evidence. She also alleged some incidents of physical abuse of the older child, for which she had taken the blame, resulting in him being briefly removed by Social Services. Father was also said to have drunk to excess and to be a regular drug user.

At the first directions hearing the case was listed for a finding of fact hearing. This was cancelled after the parties agreed to contact at a contact centre. Paternal grandmother then took over the supervision and after seven months a final order for visiting contact was agreed, with the exchange to take place at grandmother's house but the contact otherwise being unsupervised. Father gave an undertaking about not consuming alcohol during or prior to contact.

The lengthy period of supervised contact in this case clearly provided a measure of protection, although there were occasions when it appears father breached the order by taking the children out on his own. It does, however, seem surprising that there was no evidence from Social Services, even though the children had been on the Child Protection Register. Nor were the allegations about father's use of drugs followed up. Given what appeared to be a considerable power differential in the parental relationship and the nature of the domestic violence described, a formal risk assessment would, it seems to us, to have been a safer approach.

Even where there was a welfare report, however, while reference was commonly made to any allegations or concerns, this tended to be a descriptive account. It was fairly unusual to find an explicit risk assessment. In the main the reports concentrated on the progress, or otherwise of contact.

*Cases involving other welfare concerns only*

The six cases which did not involve domestic violence allegations were also less likely to have multiple concerns. Of the four cases which revolved around a single concern two involved fear of abduction, one drug and one alcohol abuse. In the remaining cases one concerned both drug and alcohol abuse, the other fear of abduction combined with concerns about the contact parent's mental health. All the abduction cases related to fears that the contact parent would remove the children from the U.K. or fail to return them.

Again cases were handled mainly through welfare reports (5) combined with supervised contact (5), although there was one case with neither. The mother in that case, however, (316 below) was in breach of a recent order made in proceedings in which there had been several previous reports.

Case 316. The order had been made 7 months previously but failed almost immediately for reasons which were never entirely clear but appeared to be linked to mother's continuing fears that the child, now 7, would be abducted and taken abroad. Since father was a foreign national who was being prosecuted for embezzlement, was accused of defrauding mother of her savings and apparently had several passports in false names and bank accounts in a number of countries, mother's lack of trust seems understandable. In the previous proceedings her anxieties were alleviated to some extent by the duration of visiting being restricted to only a couple of hours at a time. By the end, however, this had been extended to a whole day.

It appears that the mere fact of bringing the case back to court was sufficient to make mother comply with the order since agreement was reached to restore contact, on a staged basis, at the first directions hearing, to that set out in the original order. By the second hearing contact was going well and the matter was concluded. At the point the file was examined, 18 months later, it had not returned to court.

Three cases also involved input from other professionals – psychological reports on the resident parent (2) a multi-disciplinary family assessment (1) and a contact consultancy agency (1). The child in one of these cases was also separately represented so there was a report from the guardian ad litem. There were no instances of tests being ordered to establish drug or alcohol abuse.

On the basis of the information available on file none of these cases gave us concern about the management of risk.

### *Reaching agreement*

Most of the cases (16 of 22) in which the resident parent had unsuccessfully opposed direct contact were resolved by consent orders or agreements. Of the exceptions:

- One case was withdrawn, leaving an interim order for supervised contact in place pending mother's move to another country.
- Three cases had a final contested hearing. However only one of these was on the issue of whether there should be direct contact and this ended with a consent order. Of the other two contests one revolved around whether there should be staying contact, the other the quantum of visiting contact.
- Two cases were not agreed, though not actively contested. In one case it was the contact father who did not attend the final hearing, which was to have

been on the question of staying contact. Visiting contact had already been agreed. In the other case, which was described in an earlier section (case 713), the court made the order in the absence of the resident mother.

It was clear in this last case both that the mother remained opposed to contact and that it was very unlikely to happen. With this notable exception, however, it would seem that generally proceedings *had* led to a shift in the position of resident parents and even, perhaps sometimes in their feelings. Indeed in two cases the mere action of bringing proceedings seems to have been sufficient to initiate change. One of these was an enforcement case previously described (case 316), the other an unusual case in which the father had only recently discovered that his ex-girlfriend had had his child. She had refused contact and was in the process of leaving the country to live with her new partner. Agreement, for very limited visiting contact, was reached at the first effective hearing, mother having had to return to the UK to attend.

In most cases, however, the process of change was slow, often painstaking and, not infrequently, fraught. Thus:

- Only three cases completed within six months; almost half (10) lasted for more than a year and four for more than two;
- Six cases had contested interim hearings;
- Three cases had penal notices requiring either compliance with an order (1) or attendance at court (2);
- Ten had more than one welfare report; two children were separately represented;
- Of the 20 cases where the decision to restart contact was not coterminous with the end of proceedings there were only six in which contact then proceeded smoothly.

The history of the proceedings in most of these cases, therefore, was of resident parents being encouraged, persuaded, pushed or forced into shifting their position. The dynamics of this change and the extent of the resistance varied. But the impetus throughout was to try to move contact on, sometimes in very inauspicious circumstances.

Case 404. The parents had separated almost 3 years ago when the child was about 18 months old. There appears to have been contact, including occasional staying contact, until about a year before proceedings started. Father claimed that mother then stopped contact because of disputes over child support; mother said it was because father was irresponsible and lacked commitment. The parents disputed whether father had subsequently sought contact. Father admitted abusing drugs and alcohol in his youth, and having a substantial criminal record.

By the time the application was brought mother was taking the view that contact with a man who she saw as a poor role model would be of no benefit to the child and could be harmful, given he already had some behavioural difficulties. The child, moreover was said to have no memories of his father and regarded his stepfather as 'Dad'. Mother did not want any disruption to the new family unit. The Cafcass officer took a strong line on this in the first welfare report: '*whilst this is understandable, it is not a reason for a child's relationship with the other parent to be abandoned'.* Mother's concerns about father's lifestyle she considered to be '*historical*'.

Having read the report mother 'agreed' that contact should be tested by an assessment at a contact centre. There was then an unfortunate delay of 6 months in obtaining public funding for this and once contact did start the father/child relationship progressed very slowly, with the child apparently being confused about who father actually was for some time and at one point saying he did not wish to see him again. Nonetheless the Cafcass officer persisted, arguing that the child should not be responsible for decision-making since he could have no comprehension of the implications of losing contact. By the third welfare report, the contact centre felt able to recommend unsupervised contact and this was then agreed. Unsupervised contact was then tested for a further six months and after two reviews a final order was made, by consent, for reasonable contact. The proceedings had lasted for almost two years. The case had not returned to court by the time the file was examined a year later.

On the whole Cafcass officers and the courts seemed to opt for a conciliatory approach wherever possible, 'nursing' some cases to the point where contact was established, even if this took a considerable time. However, as in case 404 above, welfare reports often contained some pretty direct messages to the resident parent and some cases only seem to have moved on through a mix of persuasion and threat.

Case 458. The parents had only had a brief relationship and separated before the child, now 3, was born. Contact did occur initially but became difficult, for reasons which were disputed. Mother then terminated contact saying the stress was making her ill and that she had heard that father was '*back on smack'*. She was only prepared to offer indirect contact until the child was old enough to decide for herself, because of concerns about father's ability to look after her, his lifestyle and his friends.

In the course of the initial welfare report mother agreed to observed contact and subsequently to father seeing the child at the activity centre where she worked so she could keep an eye on contact. These sessions went well but did not progress. Although the Cafcass officer wanted contact to move on she was concerned at mother's level of distress at the prospect and the risk to her mental health (mother was now being treated for depression) if unsupervised contact was ordered against her will at this point. Contact was increased to twice weekly and a psychologist's report ordered on mother. Mother then stopped contact claiming that the child was distressed, her behaviour had deteriorated and she did not want to see her father.

The psychologist's report concluded that mother was severely depressed and that her feelings stemmed from anxiety that if she '*gave in'* to father there would be no end to his demands, that she would be required to comply with these and would effectively lose control of her life. It was suggested that if mother could be reassured as to the extent of the contact father wanted and his 'rights' these unrealistic anxieties might be overcome.

It is unclear whether mother was offered these reassurances. However contact was restarted, again at her place of work, and again the Cafcass officer found it hard to move contact on, commenting, in the welfare report:

> *Critically, mother needs to look at when and how oversight of contact is to end, as this is the inevitable next step. The child is now almost four. Mother must begin to accept that the child needs to spend some time away from her own care and with her father. If this cannot be agreed it may require the court*

*to determine for I do not believe it is in the child's interests for the matter to continue to drift on without resolution. Both parties will wish to consider that it is very much in the child's interests to work hard towards an agreement, bringing to an end the court's involvement, for failure to agree is likely to lead to a short hearing and a court order in regard to the outstanding issues*.

At the next hearing the parents agreed to have a joint meeting with Cafcass to agree arrangements. The paternal grandparents were brought in to assist and unsupervised contact at last started. At the final hearing, 18 months after father had applied to the court, a consent order for reasonable contact was made.

### Resident parents who initially opposed unsupervised contact.

There were 10 cases ending in visiting contact in which resident parents had not opposed contact *per se* but had, initially at least, wanted this to be on a supervised basis. Seven of these raised serious welfare issues - domestic violence (4); child abuse/neglect (3), drug abuse (2), alcohol abuse (1); mental health (2); fear of abduction (3), with five raising concerns in more than one area:

In two of the three remaining cases there was no indication that any of these issues were involved. In one, the child was just 12 months old and had a serious medical condition. Contact had been taking place at mother's home because of mother's anxiety that father would not be able to manage this safely. In the second, the child was seven and contact had stopped because of father's alleged unreliability. In the third case, on which there was very little information, the child was only six months old and it is conceivable that mother sought supervised contact because she was uncertain about father's parenting abilities. Given that mother had left the matrimonial home without leaving an address, however, and that at the end of proceedings the child was to be handed over at a public venue, we suspect there were issues of domestic violence which either did not emerge in the proceedings or were not documented.

### *The assessment and management of risk*

The investigation and management of the seven cases in which resident parents were opposing unsupervised contact on the basis of serious welfare concerns generally raised fewer question marks for us than those reported in an earlier section where they were opposing any contact. (Although we can only speculate as to why this should be it seems possible that since the resident parent was not objecting to the principle of contact then perhaps there was less room for scepticism about the concerns being raised). Thus although none of the four cases involving allegations of domestic violence had a finding of fact hearing, in two there had been recent proceedings for non-molestation orders and in a third orders for indirect contact only had been made in previous proceedings because of domestic violence. In the fourth case there were psychiatric and Social Services reports on the family. Where contact was not happening at the point the application was made, although in three of the five cases it was restarted before there had been a welfare report, in each this was on a supervised basis.

Similarly a welfare report was ordered in all but two cases, in one of which, where the primary concern was the impact of father's medical condition on his capacity to care, a report was commissioned from a specialist. Two other cases also had some other professional input. In one, in which there were concerns about father's mental health, a psychiatrist provided a risk assessment. In the other, a complex case

involving allegations of child abuse and mental health concerns, there was a report from Social Services, medical and police evidence, and a psychological assessment. Although no tests were ordered to establish drug or alcohol abuse, in one of the two cases where this was alleged it was admitted and the father was on a treatment programme.

There were two cases, however, which gave us some cause for concern. The first, in which the resident mother agreed to limited 'supported' contact at the first hearing, has already been cited (929). The second is described below.

Case 933. The parents separated 15 months prior to proceedings, when the child was only 7 months old. Mother had brought 2 applications for a non-molestation order, one dealt with by undertakings, which father breached, the second by an order. Her third application was coterminous with father's application for contact. Mother had been prepared for contact to take place but insisted that it be supervised by a paternal relative because of her concerns about father's ability to care for the child. She stopped it having discovered that on at least 2 occasions father had had care of the child on his own and she then sought contact only at a contact centre. Mother also voiced concerns about father's drinking and alleged that he was dealing in drugs from his home. No tests were carried out to investigate these allegations. The court did not order a welfare report either but allowed father to submit a report prepared on the children of his new partner (unfortunately not on the case file and, it appears from the hearing transcript, not seen by mother or her solicitor).

At the final hearing mother was seeking an adjournment for father to provide information about a recent police drug raid on his house (father admitting only that a small amount of cannabis had been found); whether his new wife's children had gone to live with their father because of concerns about the home situation, and whether father had been arrested for drunk driving. Mother's solicitor argued that there were simply too many uncertainties at this point for a final order to be made:

*Sir, it remains that it would seem to be an unnecessary risk for a child that cannot protect herself as well as maybe an eight year old or a six year old, who could maybe go and ask for help, but not a two and a half to three year old, and that is the mother's concern. She is more than happy for (supervised) contact to continue and certainly would agree to increase over the time period, but it is too soon. (The child) is too vulnerable and there are too many uncertainties.*

The judge, however, was clearly trying to get the matter resolved on the day on the basis that contact was not to become unsupervised for a couple of months, which would give time for mother's solicitors to check with the police, find out about father's other children, and bring the case back if they were not happy. He also indicated that:

*It would be unlikely that this court is going to deny a contact order to a man on the basis of possession of what he says is a small amount of cannabis'.*

Having heard oral evidence and submissions the judge appears to have offered the parties the option of either him making a judgement on the need for supervision or them resolving the case by means of undertakings. The parents then agreed to phase in unsupervised contact, for the same amount of time as before, father giving undertakings on his use of alcohol and drugs prior to or during contact; not taking the child to his home; not taking the child in a car and taking all reasonable steps to ensure the child's safety.

### *Reaching agreement*

This was the only case in which the resident parent failed to prevent unsupervised visiting contact which went to a contested final hearing on the issue and only one other case appeared to have even a contested interim hearing. There was not a single case which required final adjudication: one was withdrawn; and 10 had a consent order.

All three cases where no serious welfare concerns were raised settled without a welfare report being ordered. Indeed in one (where the concern had been the child's medical condition) unsupervised contact on a gradually increasing basis was agreed at the first hearing, through in-court conciliation, and although a review was listed the parents contacted the court to say it was not necessary since contact was going well. In the other two, contact in a contact centre was agreed at the first hearing; this went well and unsupervised contact was then agreed.

Of the four cases where welfare concerns were raised but which did not have a contested hearing at any point three settled after a welfare report and a fourth in the course of a subsequent report. In two of these the resident parent's position seems to have changed because their anxieties were addressed. In the others, however, it was probably more a question of them conceding in the face of adverse professional opinion.

Case 607. There were two children, aged 6 and 9. The parents had recently separated and contact had been difficult to establish, for reasons which were disputed, with father claiming mother had been obstructive, mother that father showed little interest and was unreliable. Father applied for contact; mother applied (separately) for a non-molestation order, which was dealt with by father giving an undertaking (which he subsequently admitted breaching) not to go near the family home. Mother opposed unsupervised contact on the grounds of concerns about father's depression, short temper, aggressive behaviour and threats to remove the children. Father denied all these allegations and claimed mother left the children with inappropriate carers.

Mother refused to agree any contact until father's criminal convictions had been checked and a report obtained on his mental health. Indirect contact was ordered pending completion of a welfare report. Father's convictions all proved to pre-date the birth of the children and a GP report indicated his mental condition did not make him a risk to children. The Cafcass officer concluded that the allegations and counter allegations were all part of the parents coming to terms with separation, although the evidence on which this conclusion was reached was not set out. She recommended observed contact followed by unsupervised contact moving onto staying contact. Mother then agreed to unsupervised visiting contact being resumed, but more, it seems in order to avoid staying contact than out of any change of heart about the safety of contact.

Case 608. The parents had recently separated. Only one of their children (a boy aged 8) was subject to proceedings; his sister, aged 14, who was refusing any contact, was not. The case came to court because mother had refused to let contact take place anywhere other than around the farm where she lived, or at a contact centre, alleging that father had been violent to her and the children. Prior to proceedings Social Services had been involved following an allegation of physical abuse by the girl. However it appears to have been concluded that this stemmed from mother's hostility to father, attributable partly to the mental illness from which

she suffered and although the children were placed on the Child Protection Register this was for emotional abuse. This interpretation seems to have dominated proceedings, even though there was a (to us) worrying statement from mother's daughter by a previous relationship (now 18) which supported the allegations, maintaining that all the children had been frightened of father but that no-one would believe them because of mother's psychiatric condition, which father used to '*divert attention from the abuse he put us through*'.

A psychiatric report was ordered, which was unfortunately not on the file, and a report from Social Services. This reported that although the child had changed his mind several times about whether or not he wanted contact there was no evidence that he was frightened of his father and unsupervised contact should start. Mother only complied on one occasion; father applied for a penal notice. This application was adjourned, essentially being held over mother to ensure she complied, which she then did.

## Summary

Most of the 69 cases which ended with visiting contact were resolved by agreement with only six going to a contested hearing. This is remarkable given that in almost a third of cases (21 of 69; 30%) resident parents were contesting the principle of contact, with another 16 wanting contact to be supervised. In almost half of all cases (27 of 69; 47%), and 73% of those where unsupervised contact was opposed (27 of 37; 73%), there were allegations or concerns about serious welfare issues.

Moreover three-quarters of non-resident parents (76%; 52 of 68 where this was known) were not having direct contact at the point the application was made. Typically some form of contact was either agreed, or occasionally ordered, early in the proceedings, usually on a supervised or observed basis. However it could then take a considerable period of time before matters were resolved, on average proceedings continuing for a further 10 months. Often this was because contact did not progress smoothly in the interim. Where this was not the case it could take time for parents to agree the details of the arrangements or to resolve disputes about whether contact should progress to overnights.

In most cases which ended up with visiting contact the non-resident parent had either specifically only sought this form of contact or their expectations were not known. However 25 had originally applied for staying contact, five of whom not only did not get it but ended up with supervised contact, as did a further four applicants. A further eight parents, while obtaining the *form* of contact they had originally sought, were known not to have achieved everything they had asked for in terms of either frequency or duration.

Only three cases were brought to give effect to orders or agreements made in previous court proceedings. Two were successful, one having a penal notice attached as the applicant had requested. In the third case there was no information on the court file about the terms of the original order,

Of the 20 unsuccessful applications for *staying* contact only one went to a contested hearing over the issue. In nine of the remaining 19 cases which settled the reasons seemed clear, ranging from the child's persistent refusal to the contact parent's continued drug use. The rest fell into two groups, those where parents agreed to restart contact early in proceedings and the contact parent may have decided not to

jeopardise this by pursuing staying and those where achieving even interim visiting contact had been so difficult they probably gave up.

In 11 of these 20 unsuccessful applications no serious welfare issues were raised as an objection to contact. It might therefore be argued that it was unfair that the non-resident parent had ended up with only visiting contact. In four of these cases this was determined by either the needs of the child or their resolute objections. In another four the non-resident parent had reached a decision early in the case to settle. Of the rest there were two where we consider either the outcome or the process was clearly unfair and one in which there were worrying aspects to the case which made it impossible to say this. In the nine cases where serious welfare concerns were raised we consider there were three which were at the unfair end of the spectrum and three which were clearly at the other, with the remainder being more difficult to determine.

Six of the nine cases in which non-resident parents had to settle for *supervised* contact involved serious welfare concerns/allegations and in our view none could be deemed to have had an unfair outcome. In two of the cases where no welfare issues were raised the information on file did not enable a judgement to be made but there was one case which did seem to us to be unfair and not justified by the needs of the child.

In eight cases the gap between aspirations and achievement related only to the frequency or duration of contact. It was not clear why these parents settled for less than they had sought but since most had had to overcome objections either to any contact or unsupervised contact they probably decided to be content with the considerable amount they had achieved. There was only one case in which, in the researchers' opinion, the outcome might be considered to be unfair.

In 22 cases ending in visiting contact the resident parent had originally opposed any face to face contact. In 15 this was on the basis of serious welfare issues. Cases were typically managed through a combination of supervised contact and welfare reports with other professional input being unusual. None of the nine cases involving allegations of domestic violence had a finding of fact hearing and in three we considered there was cause for concern about the assessment or management of risk.

There were 10 cases in which resident parents had not opposed contact *per se* but were unsuccessful in getting this on a supervised basis. Seven of these raised serious welfare issues, the most common being domestic violence. Two of these gave us concerns about the assessment or management of risk.

Most cases in which the resident parent unsuccessfully opposed either any contact or unsupervised contact were resolved by consent, with only two (of 32) going to a contested final hearing on the issue. The process of reaching 'agreement' was often slow and fraught with difficulty as resident parents were encouraged, persuaded, pushed or forced into shifting their position. The impetus throughout from the court and Cafcass officers was to try to move contact on, sometimes in very inauspicious circumstances, and while the preferred approach was typically conciliatory a harsher line was sometimes evident when this failed to bring about the desired response.

# Chapter 7: Cases in which staying contact was expected to take place following the proceedings

## Introduction

> *One of the aspects of this, which I draw to the Court's attention, is when you have children for a limited period and the eye has to be kept on the clock, it is a matter of entertainment and you are constantly putting your hand in your pocket to take children to various venues and the expectation is high. When children stay overnight, it's more of a living experience, looking after, care and control and the rest of it, and then the expectations to be doing things all the time decreases. That's why the cause of overnight contact is enshrined in these courts and in Cafcass practice.* (Cafcass officer in interim hearing contested on the issue of staying contact).

Staying contact was the most common outcome of the proceedings in the sample cases, accounting for 49% of the completed cases in which the outcome was known (139 of 286) and 67% of all cases (208) in which there was to be any face to face contact (table 2.3, chapter 2). This finding is consistent with the statement quoted above. It also very much reflects the picture which emerged from our interviews, in which the assumption that in most cases there would be staying contact and that this was usually a desirable goal was very evident. Sometimes interviewees referred explicitly to this:

> *Applicants often want overnights. If there are no difficulties with care they get it*. (Legal advisor to the magistrates)

> *I would start with an end goal of staying contact. It may not be the immediate outcome but it would be an end goal.* (Cafcass officer)

> *If the child is of the appropriate age and the facilities are alright then there should be staying contact. Because there's a complete difference between staying contact and non-staying. The fact that you don't have to be back at a certain time that day, you can go out for the day, whereas if you have to have them back by 5 o'clock then all day you're thinking 'I've got to be back'. Contact which gives you that space to do things. Staying contact is so different.* (Solicitor)

More commonly it was implicit in their responses to questions about what they would regard as 'normal' contact, which almost invariably referred to overnights:

> *It tends to work out at either a full alternate weekend or part of every weekend. I try to build in some mid-week contact too. If there are no obvious welfare reasons I would be looking to get arrangements similar to that, that is normally what we would suggest to parents as being reasonable.* (Cafcass officer)

> *We start from the premise that it's every other weekend and half the holidays and anything else that the parents can agree.* (Solicitor)

> *Very young babies little and often, moving toward alternate weekends of staying contact for children of school age. They're not really a norm but they're the most common models really.* (Solicitor).

Several interviewees also commented that overnight contact was now more frequent than it had been in the past:

> *I think there is a greater demand for overnight contact than there used to be.* (Judge).

> *I have to say I have noticed a change over the past few years. In the past contact used to be what you might call McDonald's contact, a couple of hours on a Sunday afternoon. I think there has been a sea change, towards involving fathers a lot more, if they want to be, that is. I find contact now tends to be more, it's horses for courses of course, but it's not very often that you'll find it's two hours on a Sunday, there tends to be an overnight element, whether it's one, two or three. I think it all ties in with the shared residence case law that's developed, which has given fathers a good deal of hope in terms of what they think they can reasonably expect to get now.* (Solicitor).

> *I think it has changed. Overnight was something, when I first started doing this, that mums were saying, he's never been a hands-on dad and I'm a bit concerned that he can't care for them, and the courts would say OK. But now, it is usual to have Friday through till Sunday.*

> Researcher: *Is it the attitude of the courts that has changed, or are dads changing in what they're asking for or mums in what they are willing to agree to?*

> *I think it's a bit of all those things. I think the court's attitude has changed and the dads have become a bit more hands on. And Mum can see that so, yes, I'm satisfied he'll actually be able to look after this child.* (Solicitor).

As in the previous chapter, we first present data on the whole group of cases in which the court would have expected staying contact to take place following the court proceedings. We then focus down on two sub-groups, the 35 non-resident parent applicants who it was known did not achieve what they had initially asked for and then the 62 resident parent respondents who ended up with staying contact having initially opposed either staying, unsupervised, or any contact at all.

## Profile of the cases ending in staying contact (139)

The cases in which there was expected to be staying contact as the result of the court proceedings were less likely than those ending in unsupervised visiting contact to involve single children (55 of 139; 55% compared with 67%; Appendix table 1). The children also tended to be older: only 17% of cases involved a child under the age of three at the point the application was made, compared to 40% of the unsupervised visiting cases (Appendix table 2). Similarly by the end of the proceedings only 13% of the index children had not reached the age of three and 23% were still under five (compared with 23% and 41%). The parents were also more likely to have been previously married rather than to have cohabited (69; 50% compared with 41%) and less likely never to have lived together (7; 5% compared with 10%) (Appendix tables 1-5).

The majority of applications which ended in staying contact (127 of 139; 91%) were brought by the contact parent, typically the father (115), almost all of whom were seeking staying contact from the start. However there were a small number of applicants who either did not specify staying contact as an objective (8 fathers) or appeared to be only seeking visiting contact at that point (1 mother, 7 fathers). There had been previous contact proceedings in 31 cases, in 12 of which the contact parent applicant was effectively seeking enforcement.

In contrast to the findings in previous chapters, that in the majority of cases where the contact parent's original expectations were known the outcomes fell short, those who ended up with staying contact were more likely to have achieved what they sought, over and above their fundamental objective of staying contact. Thus:

- 41 parents (66% of the 62 where both expectations and outcomes were known) got at least the frequency they had originally asked for; indeed 7 got more;
- 37 (64% of 58) got at least the numbers of nights per fortnight they had specified (14 got more);
- 26 (67% of 39) got the length of stay wanted; 7 got more;
- 19 of the 24 who had asked for additional visiting contact got it (79%);
- 11 (73% of the 15 where information was available) got at least the total numbers of hours of contact time sought (7 got more).

Only in terms of enforcement (12 cases) did the dis-satisfied applicants equal, but even then not outnumber the satisfied. Overall, there was evidence that only 35 non-resident parents did not achieve everything they had asked for at the outset in terms of contact and six did not get what they had sought in terms of enforcement.

Moreover, it must be stressed, the court process had achieved a considerable amount for these applicants, since in almost half of all the applications brought by non-resident parents which ended in staying contact (62 of 127; 49%) the resident parent was known to have initially disputed either the principle of contact (30), unsupervised contact (15) or staying contact (17). Further, in 14 cases the index child was said to be refusing either any contact (8) unsupervised (2) or staying (4).

It is true that this leaves a sizeable proportion where the issues appeared to be narrower. In addition, in almost half the cases which ended with staying contact (47%, 63 of the 135 where data was available) some face to face contact was actually taking place at the point the application was made and of the 72 where it was not, only eight (11%) had never had any contact since separation. Overall almost three-quarters of non-resident parents (100 of the 131 where information was available) had seen their children within the three months before proceedings started and intervals only exceeded six months in 18 cases, with six being more than one year and only one more than two. This suggests an overall somewhat less problematic group of cases than those examined in previous chapters.

Similarly, fewer resident parents were expressing concerns about serious welfare issues (58 of 139; 42% compared with 47% in cases which ended in unsupervised visiting contact) (see table 2.7, chapter 2). On the other hand, the proportion was still quite high. Moreover, comparing only the cases where the resident parent was opposing either any contact or unsupervised contact, the proportion was actually higher (81%, compared with 68%, Appendix table 8). Thus many of the cases which eventually ended in staying contact presented serious challenges to the courts.

**Table 7.1: Allegations and concerns in cases ending in staying contact**

| | Contact opposed/supervision sought | | All staying contact cases | |
|---|---|---|---|---|
| Allegations and concerns | No. | % | No. | % |
| Domestic violence | 23 | 48 | 33 | 24 |
| Child protection issue | 18 | 38 | 23 | 17 |
| Drug abuse | 18 | 38 | 25 | 18 |
| Alcohol abuse | 18 | 38 | 24 | 17 |
| Mental health | 12 | 25 | 17 | 12 |
| Learning disability | 0 | 0 | 1 | <1 |
| Abduction | 10 | 21 | 14 | 10 |
| *Any of these* | *39* | *81* | *58* | *42* |
| | | | | |
| Multiple concerns | 28 | 58 | 37 | 27 |
| Mean number of concerns | 2.1 | | 1.0 | |
| Maximum | 6 | | 6 | |
| (N=) | (48) | | (139) | |

As with all other groups, only a minority of cases which ended in staying contact went to a contested hearing (19; 14%), of which at least five settled in the course of the hearing (table 7.2). The proportion getting to this point, however, was actually larger than for any other outcome other than indirect contact (where the proportion was the same). A further six cases only settled at the door of the court on the day of the final hearing. Twenty-five cases which did not go to a contested final hearing (and 11 of those which did) had at least one contested hearing in the course of the proceedings. Again this indicates the high level of conflict in some of the cases.

**Table 7.2: How decisions were reached in cases ending in staying contact**

| | All cases | | NRP applicant disappointed with outcome | |
|---|---|---|---|---|
| | No. | % | No. | % |
| Formally withdrawn | 4 | 3 | 2 | 6 |
| Agreement, no order/order of no order | 10 | 7 | 0 | 0 |
| Consent order | 104 | 75 | 22 | 61 |
| Order made after contested final hearing | 19 | 14 | 11 | 31 |
| Not agreed but not actively contested | 2 | 1 | 0 | 0 |
| (N)= | (139) | | (35) | |

There was not a single case, however, in which the point in dispute at the end of the proceedings was whether there should be staying rather than visiting contact, let alone whether there should be any direct contact. Typically what the court was being asked to adjudicate on by this point was essentially the *detail* of staying contact – how long it should last for, how frequently it should occur; who else should be involved, even who should be responsible for the transport arrangements, although there was one case in which there was a dispute as to whether a penal notice should be attached to the order.

It might seem odd that the cases which had the highest proportion of contested final hearings were those in which the issues were narrowest. One might hypothesise, however, that in these disputes it may be harder for parents and/or their legal advisors to predict how the court decision may go. Hence there may be less pressure on the parent in the 'weaker' position to settle.

On average cases ending in staying contact were shorter than cases ending in all other outcomes (Appendix table 7). Nonetheless over a third went on for more than 12 months, with the longest case taking more than three years (table 7.3).

**Table 7.3: Duration of cases ending with staying contact by how resolved***

| Months to completion | Contested | Withdrawn | Consent | All | |
|---|---|---|---|---|---|
| | % | % | % | No. | % |
| Up to 3 | 11 | 0 | 21 | 26 | 19 |
| 4-6 | 11 | 25 | 25 | 31 | 22 |
| 7-12 | 26 | 75 | 29 | 41 | 30 |
| 13-18 | 21 | 0 | 18 | 25 | 18 |
| 19-24 | 21 | 0 | 6 | 12 | 9 |
| More than 24 | 11 | 0 | 2 | 4 | 3 |
| | | | | | |
| *Minimum* | *1* | *4* | *1* | *1* | |
| *Maximum* | *42* | *12* | *42* | *42* | |
| *Mean* | *15* | *8* | *9* | *10* | |
| | | | | | |
| (N=) | (19) | (4) | (114) | (139) | |

*Figures for two cases which were not agreed but not actively contested are not presented separately here although they are included in the total. These lasted for 17 and 23 months respectively.

As one might expect, cases ending by consent tended to resolve most quickly (46% within six months compared to a quarter or less of other cases) although the number of cases lasting for over a year, including a few very long cases, inflates the average duration. Longer cases were clearly linked with disputes over major issues (contact opposed by the resident parent or child, supervision or staying), 43% of which (33 of 77) lasted for more than 12 months, compared to only 13% of other cases (8 of 62). Prolonged cases were also likely to involve serious allegations/concerns, 53% (31 of 58) lasting for more than 12 months (compared to 13% of other cases [10 of 81]). Both these associations were statistically significant (p=.000).

## Welfare reports and expert evidence

The nature of the dispute between the parents and whether or not the cases involved serious welfare issues was also closely related to whether or not a welfare report was ordered. Overall, welfare reports were ordered in just over half the cases ending in staying contact (77; 55%). However the proportion rose to 82% (55 of 67) in cases where the parents were disputing whether there should be any contact at all, whether it should be supervised or whether there should be staying contact and to 86% (50 of 58) where the resident parent had raised serious welfare concerns.
Most welfare reports were from Cafcass (71) with six coming from Social Services. Three cases had Social Services reports in addition to a Cafcass report and two children were separately represented. In one case there was a home study report

from another jurisdiction. Thirty-one of the 70 cases where a full Cafcass report was submitted also had addendum reports.

Evidence from other professionals was even less frequent than in cases ending with visiting contact (26; 19%). Again it was mainly from health/mental health professionals although seven cases involved tests for drug abuse and four for alcohol abuse. Individual cases involved reports from experts on sexual offending or drug and alcohol abuse, police child protection or domestic violence units, a probation officer and a contact centre. One case involved a DNA test.

It is a measure of the narrowness of the issues in a good proportion of cases, however, that 60 cases (43%) did not have any professional evidence.

## Getting contact started

In 72 cases which ended with staying contact there was known to be no face to face contact at the point the application was brought. In most (44, 61%) some form of direct contact was arranged at either the first (34) or second (10) hearing, before any welfare report had been ordered. In 21 cases, however, arrangements were not made until professional reports were underway (3) or had been completed (18), while six required a contested interim hearing[24].

The use of supervised contact to get contact going again was less in evidence than in the cases examined in the previous chapter, but it still applied to a substantial minority (24; 33%) with a further nine families (13%) moving directly to unsupervised contact after a period of observation by Cafcass or Social Services. Typically, where supervised contact was used a welfare report was also ordered (92%; 22 of 24) although often the contact started before the welfare investigation had begun (14 of 24).

As we found in the cases ending in visiting contact, however, getting some form of contact going again rarely meant that all matters had been agreed. Of the 34 cases where a decision was reached at the first hearing for contact to resume a mere four ended at that point with only four having just one more hearing and eight two. The rest ranged from three to nine more hearings. On average these 34 cases had three more hearings and went on for another eight months, the longest only ending 23 months later.

Across the whole group of cases ending with staying contact where there was no direct contact at the outset, on average cases went on for nine months after the decision to restart contact was reached (with a maximum of 25) and had four more hearings (maximum 19).

In contrast to cases which ended with visiting contact, however, these lengthy periods to final resolution did not appear to be typical because contact was subsequently disrupted. This only applied to 22 cases (33% of the 67 where the establishment of contact was not coterminous with the end of the proceedings). Rather it seemed to be a question of the time taken to progress contact, from supervised to unsupervised, then increasing the amount of contact time, and then making the big leap to staying contact.

[24] In one case the point at which contact was re-established was not known.

Across all the cases in which contact had to be re-established 51 resident parents (71% of 72) had originally opposed either face to face contact (30); unsupervised contact (15) or staying contact (6). There were only 21 (29%) in which none of these applied, in five of which the issue was the index child's resistance to contact. It is not surprising, therefore, that moving these cases on tended to be a lengthy and painstaking process. And of course in cases where there were major issues in dispute contact was also more likely to run into difficulties (36% (20 of 56) compared 13% of other cases (2 of 16).

*Cases where contact was taking place at the point the application was made*

Where contact was taking place at the outset (63 cases where this was known) there was one less hurdle to overcome. Moreover fewer of these parents (16; 25%) were disputing other major issues with only three (5%) arguing about supervision and 13 (21%) about staying contact. Not surprisingly, therefore, proceedings tended to be shorter, 60% (30) completing within six months (compared with only 22% of those where contact had to be established (16 of 72). Only 19% (12) lasted for longer than a year (compared to 39%; 28 of 72). Well over half (38; 60%) completed within one (20) or two (17) hearings (compared to 10; 14% of those where there was no contact). Interestingly, however, where the case did not resolve at the first hearing, contact was just as likely to run into difficulties (14 of 45; 31%) as in the cases where contact had to be re-established.

## Contact parents whose initial objectives were not realised

As noted at the beginning of this chapter, there was evidence in 35 of the cases ending in staying contact that the non-resident parent did not achieve everything they had originally sought at the point they made the sample application. Thus 21 did not get the frequency they had sought; 13 got shorter stays; 21 got fewer overnights overall; five did not get the additional visiting they had wanted and four did not get the overall number of hours of contact time they had specified.

Since in well over half these cases (21 of 35, 60%) no contact was taking place at the start, and at the end of the day staying contact was obtained, it could be said that all these parents had achieved not only their basic objective to get contact restored but a good deal more. Moreover, as noted in chapter 3, the fact that one element of the contact agreed or awarded fell short of the contact parent's expectations does not mean that the entire contact package was to their disadvantage. In 15 cases we consider there were compensatory aspects which probably meant the overall package was acceptable. For instance, staying contact might not be as frequent as originally sought but over a fortnight the number of nights agreed or ordered might be just as many, or in some cases more.

### Cases which went to a contested final hearing.

As with all the other groups we have looked at, only a minority of contact parents who ended up with staying contact but who did not realise their initial expectations persisted to the point of a final contested hearing (10; 29%). Moreover none of these hearings were fought on the issue of whether there should be staying contact. Eight concerned the quantum of contact, one the logistics of the arrangements and one whether there should be a penal notice attached to the order.

If one looks simply at the issues in dispute at these contested final hearings in cases where non-resident parents did not achieve everything they had initially wanted then it appears that court decisions are more likely to favour the resident parent (6 compared to 3 for the contact parent, with insufficient detail being available on the tenth case). However it has to be remembered that three of these resident parents had originally been opposed to either any contact or unsupervised contact. Therefore although they may have 'won' on the narrow issues which remained for the court to settle at the final hearing, they had already conceded on the major ones. By putting the final hearing into the context of the overall proceedings the picture looks entirely different, with six outcomes 'favouring' the contact parent and only three the resident parent.

## Cases which did not go to a contested final hearing

Although contested hearings might be more common than in the other outcome groups the typical mode of resolution in cases where the contact parent was dissatisfied with some aspect of the staying contact they achieved was still either a consent order or an agreement without any order (with one case being withdrawn). So again the key question is: why did these parents decide not to pursue their aims to the very end?

### Table 7.4: Decision points where case resolved without a contested final hearing

| | No. | % |
|---|---|---|
| *Resolved without welfare report* | | |
| At second hearing | 3 | 12 |
| Later hearing | 1 | 4 |
| | | |
| *During report preparation* | | |
| In course of first welfare report | 3 | 12 |
| In course of later report | 1 | 4 |
| | | |
| *After welfare report* | | |
| After single report | 4 | 16 |
| After later report | 4 | 16 |
| | | |
| After contested interim/s | 6 | 21 |
| On day of final hearing | 3 | 12 |
| | | |
| (N)= | (25) | |

In terms of the stage in the process at which these 25 cases resolved, the largest group (8; 32%) consisted of cases which were agreed after a welfare report. In six (4 of which also had a welfare report) agreement only followed a contested interim hearing. Of the remaining cases four resolved during the preparation of a welfare report, and four without any report being ordered, mainly at the second hearing. Three cases did not settle until the day of the final hearing (table 7.4).

Where the case settled after a welfare report (8) or subsequent to orders made in contested interim hearings (6) in most cases there was a fairly clear causal link with the contact parent's decisions. Thus:

- In seven cases the amount of contact agreed followed the recommendations of a welfare report.
- In an eighth, in which the officer had recommended a finding of fact hearing about allegations of domestic violence, which was instead resolved by means of the contact parent giving an undertaking and agreeing to contact taking place at the paternal grandparents, it seems likely that the contact parent recognised he was unlikely to get the contact he was seeking.
- In three cases the final order merely confirmed the amount of contact ordered at a contested interim hearing, the contact parent presumably deciding not to seek to improve on it.

In most of these cases the difference between what contact parents originally wanted and what they finally settled for related to the frequency of staying contact, which was typically fortnightly rather than weekly. There was only one case, however, in which it was *clear* that this resulted in fewer overnights since usually the contact parent had not specified this at the outset. One father failed to get his current contact of two nights every other weekend extended to three. Two parents had to agree to staying contact taking place only at the home of the paternal grandparents. The greatest discrepancy was in the following case.

Case 908. The children concerned were aged 14 and 13. The parents had been separated for six years but continued to live close to each other and contact had been working well, with the children calling in to see their father as they wished and staying overnight two or three times a week. The application was brought because of the boys' imminent move to another town some three hours travelling time away, because of changes in their stepfather's employment. Mother proposed alternate weekend staying contact plus mid-week visits in the new area. Father rejected this and applied for a Prohibited Steps Order to prevent the move, as well as orders for residence and contact.

Father's applications for a PSO and interim residence were dismissed at an early stage. The parents then agreed weekly staying contact on an interim basis. Subsequently the mother applied to vary the order to fortnightly and the boys told the Cafcass officer that they were finding the weekly commitment too onerous and it was disrupting their other activities. Father withdrew, writing a poignant letter to the court:

> *I reluctantly concluded that I have little impact on the boys' lives now and they regard their (new) house… as home. I am now someone they just visit and I do not feel anything like the part of their lives that I used to when they lived (here). It feels like they have grown up and left home, which at the ages of 13 and 14 is too soon.*

There were, however, a few cases in which, although the contact parent's decision was made subsequent to either a welfare report or a contested interim, any causal connection was obscure. In one of these it was changed parental circumstances rather than professional recommendations or decisions which seemed to be the key factor (444). In the other two the contact parent had battled hard to get staying contact and probably decided to settle for what they could get.

Where decision-making could not be directly linked to either a welfare report or a contested interim it was harder to know why the contact parent decided as they did and it is only possible to speculate. Three cases, for instance, settled at the second hearing without a welfare report having been ordered, in each of which the non-resident parent settled for fewer overnights than originally sought. In one of these

the views of the child, as stated by the mother, may have been instrumental. In another, mother having conceded the staying contact she had been opposing, probably the father decided not to pursue the amount and frequency he sought. In the third there was simply insufficient information on file even to hazard a guess.

Four cases settled in the course of either the first (3) or a subsequent welfare report (1) and the input of the Cafcass officer may have been influential. In two of these the non-resident parent was probably satisfied with the overall package even though it fell short in some respects of what they had originally sought, particularly since in one the resident parent had wanted supervised contact. In a third, having overcome the resident parent's opposition to staying contact, the applicant may have decided to settle for that. In the fourth, in contrast, the resident mother had never opposed staying contact, somewhat surprisingly given the history of domestic violence (which had led to a non-molestation order just prior to the proceedings) and father's frequent spells in prison (including during the course of proceedings). Although the mother was opposing the amount of contact father wanted she, it appears, would have welcomed an order regulating contact. Father's preference, however, was for more ad hoc arrangements and it seems possible that his decision to withdraw may have stemmed from a desire to avoid a more restrictive regime.

Finally there were three cases which only settled on the day of the final hearing. Each of these had been hard fought and all lasted for over a year. In one the resident parent had originally opposed any contact; in the second unsupervised contact. In each the non-resident parent gave up trying to improve on what they had achieved through a contested interim hearing. (We look in detail at one of these cases [1033] later). In the third case (case 422, post), in which only the quantum of staying contact was ever disputed, we suspect that having battled on for seven hearings and 15 months the father simply gave up trying to overcome mother's resistance to stays of more than one night.

In addition, it must be remembered that 22 of the parents who achieved staying contact had originally also applied for sole residence and six for shared residence, with contact as a default position. Some of these have already been included in the 35 who were known to have been disappointed with the staying contact they achieved. Eleven, however, were not. If it were to be assumed that they were all disappointed with what they had achieved, the number of those dissatisfied with the staying contact they obtained would rise to 46 (36% of the 127 non-resident parent applicants). That may not, however, be a reasonable assumption and we have not adopted it here. Some of the solicitors we interviewed referred to applications for residence being used strategically, as a lever for getting contact:

> *There have been occasions where if the resident parent has been particularly resistant to contact and contact has sort of limped on and there has been a lot of correspondence about it before we have got to the stage of issuing court proceedings, when I have advised a non-resident parent to put in an application for either contact and residence or shared residence, just really to try to give the resident parent a bit of a wake-up call. I don't do that very often but I do do it if I think it is going to help.*

## Could the outcome in terms of contact be seen as unfair to the contact parent?

Assessing possible 'unfairness' is obviously much harder when the shortfall between aspirations and outcome relates only to the quantum of contact rather than, as in

previous chapters, whether there was to be any contact at all, whether it was to be supervised or whether there were to be overnights. What we therefore tried to do was to look at cases where the contact parent did not get what they had originally sought in the context of the arrangements made in other cases and what might be regarded as 'normal'. Again we would emphasise that these are only our own judgements, based on the information available to us.

### *The frequency of staying contact*

There is no formal norm as to what constitutes a reasonable amount of staying contact. However, as reported in chapter 2, by far the most common pattern in our sample (109 of the 122 with relevant data; 89%) was for staying contact to take place on at least a fortnightly basis, with only 11% of arrangements being for less than this and 32% more. The interview material also suggested that although the circumstances of the individual case would affect the frequency of contact, a minimum of alternate weekends was the standard:

> *There is a slight rule of thumb in your head. All things being equal in terms of proximity, lack of hostility, you would look at every other weekend staying contact and maybe some contact during the week. That would be a good goal to have, if you're not looking at shared residence then that would be a goal that I would be wanting to achieve. It is usually a good pattern for children, all other things being equal. But every single family will need something different.* (Cafcass officer)
>
> *In my mind, unless there is a reason to the contrary, for example geography, then I would expect at least a good weekend every other weekend.* (Judge)
>
> *You always start from once a fortnight.* (Solicitor)

*Cases with less than fortnightly staying contact*

The sample cases where the non-resident parent both got less frequent contact than they had originally asked for, and less than fortnightly overnights, might therefore be regarded as potentially unfair. There were only six cases in this category[25], three where there was to be three-weekly staying, the others being monthly. In one of these cases the contact parents' circumstances changed and more frequent contact was not feasible.

It should be noted that all but one of the remaining five cases ended in consent orders without a contested final hearing and in the exception the point at issue was not the frequency of contact but whether a penal notice should be attached to the order.

We think it would be hard to categorise any of these cases as plainly unfair to the non-resident parent. Indeed in two, although the contact parent did not get the frequency of contact they had sought, they were probably quite satisfied with the overall package since one got the total number of overnights he wanted and while the other did not achieve either of these he did get to have the child for the two nights at a time he had sought, which the child had been resisting. In a third case the frequency was determined by transport difficulties.

[25] We have not counted one case where frequency was left up to the child, in circumstances which indicated contact would actually be more frequently than fortnightly.

The remaining cases both involved serious welfare concerns. In one it was somewhat surprising to us that the mother had agreed to any staying contact at all, given the documented history of domestic violence and child abuse and its impact on the children. The final case concerned a resident father who was opposing staying contact because of concerns that mother's ex-partner, who was a Schedule 1 offender, was still around, although this was denied. At a contested interim hearing the court ordered there should be staying contact for one night a fortnight. The parents subsequently agreed to vary this to two nights a month.

*Cases where the non-resident parent did not achieve weekly contact*

What appears to be a de facto 'norm' of fortnightly staying contact, of course, is in itself open to challenge. Indeed, as reported in chapter 2, almost a third of cases which ended in staying contact (38 of 122; 30%) provided for overnights on at least a weekly basis, indicating that the 'norm' is by no means inflexible. Moreover some of the solicitors we interviewed clearly saw weekly overnights as no less 'standard' now than fortnightly.

Others, however, put forward explanations for why, at least if parents are not in a shared care arrangement, alternate weekends have become the dominant mode for staying contact. These typically referred to the need for, or at least the court's perception of the need for, the children to have some 'quality time' with the resident parent:

> *For a normal dad, works 9 to 5 Monday to Friday, dad should expect to have every other weekend. That's realistic because it allows mum to have some quality time on the weekend as well.*
>
> *They say 'Why can't I have them every weekend?' and then you have to try and explain to them that Monday to Friday they're at school so mum, or dad, whoever's living with them, needs one weekend to have some fun time with them and you get the other weekend to have some fun time with them.*
>
> *What is the point of asking for contact every week when you know the courts aren't going to give it and you know that the courts won't even consider it reasonable if the mother has no quality time with the children.*

These arguments were also echoed by Cafcass officers and judges:

> All *things being equal in terms of proximity, lack of hostility, you would look at every other weekend staying contact and maybe some contact during the week, after school. The idea of the resident family being without their children every weekend, maybe the other half brothers and sisters doing things at the weekend and the child concerned being out of it…*(Cafcass officer)
>
> *It's not necessarily right for the child to be taken away every weekend to be with father because the child has its own, I'll call it social life. From a very young age they want to play with their friends, they want to be in their own house.* (Judge)

In 12 of the cases ending in only fortnightly staying contact the non-resident parent had originally wanted a higher frequency, typically weekly. Indeed one was initially seeking sole residence and subsequently shared care and a second was aiming for shared care from the start.

This latter was the only case which went to a final contested hearing on the issue of contact frequency. However by the time this point was reached father was only seeking fortnightly contact (which he got), while mother was arguing for monthly.

Case 612. The children were aged 3 and 1 at the start of the proceedings. It was acknowledged that father, who was unable to work because of disability, had played a large part in their upbringing and he was seeking shared residence, with staying contact as a default position. The case was highly contentious throughout. Mother alleged that father had become mentally unstable, abused prescription and other drugs and had been violent to her. She initially opposed all contact. Father denied all the allegations, claimed it was mother who was hysterical and violent, and although admitting he had taken an overdose, claimed this was accidental.

At the first hearing the parents agreed contact at a contact centre. Father conceded on shared care, following a welfare report which concluded that this was not feasible because of the distance between the two families and the high level of parental conflict. Contact then broke down (after what appears to have been a minor incident involving lack of due care rather than abuse) because the contact centre said they could not provide an appropriate level of supervision. Telephone contact was substituted and, not unnaturally given the ages of the children, was not very satisfactory. This too was suspended by mother.

The court then made an order for Cafcass to observe contact and for a psychological risk assessment of father, after which contact resumed at the contact centre, with paternal grandparents additionally in attendance. It was then agreed that contact should move out of the centre, with the grandparents providing supervision. This went well, but mother opposed moving to staying contact at this point. Father persisted, seeking overnight stays every weekend. Mother then offered one week in four, on the grounds of the distance the children would have to travel. Had both parents not been unrepresented by this point, we would have anticipated that the final outcome, which was clearly the compromise position, could have been arrived at without a contested hearing.

The transcript of the hearing indicates that by this point father was prepared to accept fortnightly contact. Mother initially resisted but then said she would be prepared to agree to fortnightly if father agreed to be responsible for the transport. No evidence was heard.

Whether the outcome in this case could be regarded as unfair partly depends on whether mother's allegations were fabricated or exaggerated. Unfortunately, although a finding of fact hearing was listed, it did not take place because by this point mother was at an advanced stage of pregnancy. Her request for a psychiatric assessment of father, made with full knowledge of his medical history, was not successful. Once the issue of residence was settled, however, the question of distance was likely to be determinative, given the age of the children.

In the other case (508), in which father had applied for sole residence, subsequently seeking shared care but ending up with only fortnightly contact, the outcome was determined by his refusal to let the Cafcass officer see his accommodation, which meant that the interim contact arrangements, for contact at the grandparents' home, could not be progressed.

Of the remaining 10 cases, in two, while the contact parent did not achieve the *frequency* they wanted, the amount they ended up with was as much as they had originally sought (and in one case actually more). One father changed what he had been asking for because of a change in his work schedule. Two further cases involved substantial welfare concerns. In one Social Services were essentially controlling the pace at which contact developed. In the other, in which a finding of fact hearing had found against the non-resident father, he was probably fortunate to even get staying contact.

This leaves five cases which might be deemed unfair to the non-resident parent in that there was nothing about them or their circumstances which meant that contact could not be more frequent than fortnightly. Two of these (outlined below) are described in more detail elsewhere in the report:

> Case 908. Mother and children had moved away and the boys, aged 13 and 14, specifically asked for the frequency of contact to be reduced. While we can sympathise with the father's plight, the outcome was determined by the circumstances.
>
> Case 1033. This revolved around mother's reluctance to let the child (aged 2 at the start of proceedings), stay overnight despite a previous court order, and her allegations that father used cocaine (tested and proved false). Staying contact had been re-introduced but although the welfare report suggested that the number of days could be extended it recommended the frequency remain the same. The father conceded and settled for the contact he was currently having.

The third case also concerned a very young child and the resident mother's reluctance to allow staying contact.

Case 116. The child was 32 months at the point father brought the proceedings. Twice weekly visiting contact had broken down. According to father this was because he had been unable to keep up child support payments when he lost his job. Mother's version was that father's unreliability about contact had been disruptive for her and the child; that the child had returned from contact with injuries indicating a lack of supervision, and that father had failed to inform her that he was no longer living with his mother but had no accommodation of his own. She maintained that father had falsely informed the Housing Department that he had staying contact and that his application was prompted by his housing needs. She was not prepared for any contact to resume until a welfare report had satisfied her of father's commitment to the child and his parenting abilities and had checked out his living arrangements. She was opposed to overnights because of the child's age and did not feel 'emotionally able to release her'.

The parents reached agreement for the resumption of visiting contact at the first hearing and then, following a positive welfare report – which included the Cafcass officer checking father's accommodation, since he refused to let mother see it – staying contact for one night every other weekend. In the intervening weeks there were to be 7 hours of visiting contact plus one afternoon every week.

Although the father in this case did not achieve what he had sought in terms of the frequency of staying contact he did achieve a great deal and in our opinion the outcome did not seem unreasonable.

The remaining two cases in which we think the outcome might be regarded as unfair to the non-resident parent both settled early, one at the second hearing, the other in the course of the welfare report. There was therefore no indication of any case-related reason why the non-resident parent should not have obtained the weekly contact they sought. It is possible therefore that they conceded in the light of what they had been told or understood about local court norms.

*Midweek overnights*

If weekend staying contact is generally to take place on a fortnightly basis then the only other way the non-resident parent can increase the frequency of stays is if there is overnight contact during the week. In the whole sample of cases which ended in staying contact there were only 14 cases where this was part of the final arrangements for contact. It was also rarely mentioned in our interviews, which suggests that it is a fairly infrequent occurrence and there was at least some evidence that it was not regarded favourably by Cafcass or the courts:

> *If there is always tension at handovers and you know that's happening at weekends, to do it twice more doesn't seem fair on the kid. And again, the children I speak to who talk about what it's actually like to have a midweek sleep at the other house, it isn't homework, bedtime, it's shall we watch a DVD, this is our precious time, oops it's 9 'clock, don't tell your mum and then there are secrets to be kept. Then teachers of course tell you 'they always look a bit tired on a Wednesday'. It comes back for me to whose best interests are being served. The non-resident parent would love it, enjoy every minute, that sense of seeing your kids wake up and getting them up is a real joy but is it in the child's best interests?* (Cafcass officer).

> *The judges here quite often don't like children to be split on school weeks, they say on school weeks they should stay in their bed where they spend the majority of the time.* (Solicitor).

> *I am not happy at the moment to give you an order for overnight contact midweek; that is not generally thought to be a good thing for a child who is as young as this (6). At least I do not generally think it is a good thing. Little children can be jolted out of their routine very easily and if his mother is doing a good job in getting him to school on time and so on, I think you have got to stick with that. The fact that you are phoning each other, texting each other, grousing about each other, complaining about each other; is distressing and I found it distressing this morning. So, I think you should have an order for contact on a weeknight between 4.30 pm and 7.30 pm (in addition to weekend staying). At the moment I think that is about as much as you two can cope with and about as much as (the child) can be prepared to withstand and cope with.* (Judge, extract from court transcript).

It should be noted, however, that there were only four cases in which the non-resident parent had been seeking mid-week overnights at the start of the case (and the case from which the judgement cited above was taken was not one of them). Two of them, both involving children age eight) succeeded. One of the two which did not we have already described and categorised as probably unfair[26] in that father only achieved staying contact every other weekend with his three year old, rather every weekend as he had sought. He also had to settle for midweek visiting contact rather than staying.

[26] Case 1033

The second case, which concerned a somewhat older child (7), settled at the first hearing with no order being made, the non-resident father accepting that mid-week contact would be only on a visiting basis. There was no indication of any welfare issues in this case, which had arisen because, according to father, mother had reneged on an informal agreement giving him mid-week overnights and had then stopped contact. There was nothing on file to indicate why mother was opposed to midweek staying, although one can perhaps speculate that she had reservations about the effect on the child. We think it is at least arguable that this one too represented an unfair outcome for the father.

### *Number of overnights per stay*

As reported in chapter 2, while extended weekends were quite uncommon, with only 14 arrangements providing for three or more nights in a row (apart from holidays) the remaining cases were fairly evenly divided between one and two night stays. The interview data also suggested there was no common pattern although several solicitors suggested that the trend was for longer periods:

> *School age children it could be a long weekend, sometimes it's Friday through till Monday so that way the absent parent is involved in picking up from school and taking to school. Or it could be Saturday to Sunday.*
>
> *Increasingly…Friday till Sunday, possibly Monday.*
>
> *I think it has (changed). A weekend used to be Saturday to Sunday whereas now you can often have a four day weekend.*

In the light of these variations it is not feasible to examine 'fairness' against an informal 'norm' in the way we tried to do with frequency. However there were 11 non-resident parents who ended up with shorter periods of staying contact than they had originally asked for (and in a further two this was left up to the child). Five did not get the three nights they had asked for, of whom three got two and two only one. Six got one night rather than the two asked for.

In three of these cases the overall package agreed was probably not disadvantageous to the contact parent in that they got as many or even more overnights over a two week period than they had sought. However the limitations of having the child to stay for only one night rather than two should not be discounted.

In eight, however, the contact parent did clearly lose out. Three of these have already been discussed. In one case[27] the contact parent could scarcely have cause to complain of the outcome since he refused to let the Cafcass officer see his accommodation. Two others[28], however, were more questionable since although serious welfare concerns had been raised they were either not substantiated or not regarded as a barrier to staying contact.

In all five of the remaining cases we consider the contact parent would have had reason to feel aggrieved, since none of the resident parents had raised any serious welfare objections and none had opposed staying contact *per se;* the issue was purely quantum. Only one of these five cases settled early (at the first hearing). Two went to a contested final hearing on the question of the number of overnights, one

[27] Case 508
[28] Cases 612 and 1033

had a contested interim (the order made then being agreed at the final hearing) and in the fifth the father gave up the fight after 15 months. This case was particularly interesting because of mother's principled objection to more than one night's stay at the weekend.

Case 422. The case concerned a 6-year old boy, living with his mother. The parents had never lived together and their relationship had ended many years ago. There had always been contact, including staying contact, although the arrangements seem to have been fragile. The immediate spur to father's application was mother's lack of response to his request to take the child abroad to see his grandparents, but father took the opportunity to apply for an order regularising contact, seeking two nights staying contact alternate weekends plus one overnight in the week, holiday contact and daily telephone contact.

The issues separating the parents were narrow – whether the weekend should consist of one or two nights stay – but mother refused to budge, arguing that the child needed to have one full day at home every weekend. As she put it in a letter to the judge:

> *As I said at the last hearing, regardless of (his) music or drama (commitments), the child needs part of the weekend at home from where he sees his friends and plays, has all his familiar things around him, can do his school projects and from where we can arrange spontaneous (activities) such as music sessions and sleepovers.*

Since the court had not ordered a welfare report in this case (probably because there were no welfare issues) what the child thought about this was not investigated. Father accepted one overnight during the week and one every weekend.

The arguments put by the resident mothers in two of the other cases also have a wider relevance than the circumstances of their own disputes. In one the father already had two nights staying contact alternate weekends, but wanted to extend this to a third night (and have a mid-week visit). The mother opposed, on the grounds that the child, who was 11, needed to have time at home on the Sunday evening. In the second case the father already had one night's staying contact every weekend, plus two evenings visiting. He was seeking three nights staying contact every other week (plus mid-week visiting every week). The mother objected, arguing that a) at the ages of five and two the children were too young to have three nights away from her and b) that she needed *'quality time with the children, not just snippets of contact'.*

As both these cases went to contested hearings on the issue, one interim, the other final, and the non-resident parent did not achieve what they sought, perhaps the court was prepared to accept these arguments. On the other hand, since in one of these cases at least, the parents had had difficulty making the existing contact arrangements work, it may have been thought that extending contact against the resident mother's wishes was unlikely to help.

### *Additional visiting contact*

In a substantial minority of all the cases ending in staying contact (48; 35%), as reported in chapter 2, the non-resident parent was also expected to have additional visiting contact, typically during the week. Indeed, since most of those who asked for additional visiting got it, this might be regarded as a normative pattern. Several of

our interviewees commented that practice in this respect had changed, as the quotes from solicitors indicate:

> *At one point it was virtually unheard of to have contact midweek because of school routine but that has changed.*
>
> *It was very much straight every fortnight, no-one considered mid-week contact as having any benefit. We've moved on a long way from that. Mid-week contact is much more common.*

However although the outcomes in the five cases where parents did not get the additional visiting sought could therefore be regarded as potentially unfair there were none where this was clearly the case. In two the loss of visiting would have been amply compensated for by the additional staying contact agreed and in a third staying contact was to take place at the grandparents' house because of welfare concerns and the father was probably fortunate to get staying contact. In the two remaining cases the additional visiting contact was not the central issue and both have been covered in previous sections.

In total then, our interpretation of the data in the 35 cases ending with staying contact where the non-resident parent applicant did not achieve what they had originally sought would indicate that there could be as many as 10 in which some aspect of the outcome might be seen as unfair to that parent (7 with regard to duration of each stay; 5 frequency and 2 midweek overnights).

## Enforcement

Twelve of the cases which ended in staying contact were brought to give effect to existing court orders, of which five involved applications for penal notices and one an action for breach of the order. Ten succeeded to the extent that the original order was confirmed, including all but one of those where sanctions were sought. However although one resident mother was fined for breach of the order, no penal notices were issued. In all then six applications failed in whole or in part.
The two cases in which the previous orders were not confirmed were very different.

Case 352. A defined order for staying contact had been made two years ago and had operated well until about three months before proceedings when there was an argument, witnessed by the child, a 12 year old boy, between the non-resident father and mother's new partner. The boy subsequently wrote to his father saying he no longer wished to have contact. The court ordered a welfare report which concluded that although the letter represented the boy's true feelings at the time he did now want to see his father. However he did not want to be tied down to defined times. The parents agreed an order for reasonable contact.

Case 1033. The parents separated before the child, now two, was a year old. Contact always appears to have been problematic. A court order for staying contact had been agreed seven months previously but broke down within three months. Father, the non-resident parent, applied for the order to be made effective and for a penal notice.

At the first hearing, held within three weeks of the application, the parents agreed that contact would resume, initially at a contact centre and then moving back to staying contact, although for only one night at a time, rather than the two provided for

in the original order. The mother, however, then applied for variation of the order on the grounds that a) the child did not have an attachment to father and would not therefore be comfortable with staying contact; b) she had concerns about father's ability to care for the child overnight and c) father used cocaine. A consent order was then made whereby there would only be visiting contact until the results of a drug test but if that was clear, and visiting contact had gone well, staying contact would resume. The court stipulated that if father's drug test was clear mother should bear the full costs of the test. Father's application for a penal notice was adjourned.

There was then considerable delay in obtaining the drug test, prolonged by delay in the submission of a Cafcass report on observed contact, by which time a year had elapsed. Both, however, were in father's favour, indeed the Cafcass officer was very positive about the child's relationship with him and suggested that staying contact could extend even beyond the two days at a time allowed for in the previous order. Nonetheless the mother continued to say the child was not ready for any extension at this point and father conceded. No order was made on the application for a penal notice. The parents agreed to go to mediation to try to resolve the remaining issues and to plan how staying contact might be extended.

This case had not returned to court at the point the file was examined, 15 months later.

Two of the four cases in which applications for penal notices failed although the previous order was confirmed also involved very recent court orders. We shall look in detail at these later. The other two had much older orders.

Case 407. An order for staying contact in the holidays and midweek visiting had been made four years ago. The child was now 12. The non-resident father brought the proceedings because he alleged mother was frustrating the weekly visiting and he had never been allowed the holiday contact. By the first hearing, which neither parent attended, it was reported that regular visiting contact was taking place and by the second that mother had agreed dates for holiday contact. Father withdrew his application. This case has not returned to court.

Case 707. The child was 10 and for the past six years had been having holiday contact with his father, who lived at the other end of the country, under the terms of a court order. According to mother he had refused to go on the last two occasions so that by the time the application was brought there had been no contact for eight months. The welfare report concluded that the boy's reluctance was genuine and that mother did encourage him to go but that the father needed to understand that as the boy got older he would have other competing activities and interests. Contact was restarted and went well. There was a contested final hearing over the need for an order, which went father's way. The idea of a penal notice, however, was not formally adjudicated upon and appears to have been quietly dropped. This case has not returned to court.

The two cases in which recent orders had been breached were much more complex.

Case 341. The parents had never lived together and their relationship ended before the child was born. They had been involved in court proceedings more or less constantly since the child, now four, was 5 months old, although it appeared that the principle of contact was never in dispute.

The first set of proceedings, which lasted for 3 years, ended with an agreed order for one night staying contact 5 out of every 6 weekends plus midweek visiting. Five months later the case was back in court with a dispute about holiday contact and by the time of the first hearing all contact had stopped. Contact was restarted and an order made for holiday contact. Two months later father (the contact parent) brought the sample application, which was for a penal notice, alleging that mother had frustrated the midweek contact on four occasions.

The judge listed the case for a review of contact rather than the penal notice, on the grounds that contact was taking place and in his opinion mother was not deliberately frustrating contact. The original order was confirmed, with minor adjustments to the holiday contact and father's application for a penal notice was adjourned.

Seven months later, although contact was continuing, the case was back in court again, this time over the issue of handovers, which father wanted to do himself rather than relying on a relative. Mother resisted, on the grounds of severe conflict over handovers in the past, including an assault on a family member. Father got his way, having given an undertaking about non-harassment, the court ordering handovers to take place at a neutral place. As yet the case has not returned to court.

Both the parents in this case were highly critical of the court system, mother largely because of the lack of judicial continuity which meant, in her view, inconsistencies of approach. Father's criticisms, extracted from numerous letters of complaint, focused on the ineffectiveness of the court in enforcing orders:

> *I am a father who four years after my break-up is still going back and forth to court to get court orders enforced after they have been constantly broken. I would like to know what procedures are in place next time she breaks a court order because on each occasion I have to wait a month at least before seeing child again. It is to her advantage to do this. I have mentioned this in court time and time again but I want the hours lost in broken court orders to be paid back. Why should myself and the child lose out when we are keeping to the court order? If no deterrent is being offered then the courts are just giving the green light for this to happen time and time again, Surely it is not the system's purpose that the person who is constantly breaking court orders benefits, which is what is happening. Why don't judges enforce court orders? Warnings are given time and again. It's a joke. It's obvious now to my ex that she has now been given a green light to keep breaking court orders because four years down the line she is still getting away with dictating to the court. I have seen six judges. All of them have avoided the issue of clamping down. They all say mother shouldn't be doing this but none have the balls to actually do anything about it. They all bend over backwards to look for an excuse for mother's actions. Another trick judges use to avoid clamping down is to say they are not interested in the past, just what we can do to move on. Why? When a trend keeps repeating itself you have to take into account what's gone before. Judges aren't man enough to do their job. All have asked why we are still coming back in front of them. For crying out loud, it's obvious, it's because each time they avoid doing something about the issue.*

While these criticism may seem excessive in the circumstances of the sample proceedings, it may be that the earlier history of the case, which we were not able to examine in detail, may have provided more justification.

In the second case the application for a penal notice was not actually made until proceedings were underway.

Case 1038. The child was seven and had staying contact with his father every weekend (alternating between one and two nights) plus one overnight in the week. This was an agreed order but in the context of father having withdrawn a previous application for residence.

Seven months later father brought another application for residence, maintaining that mother '*continually disobeyed'* the (contact) order. Mother sought to vary the order, stopping the midweek contact and reducing weekend contact to fortnightly, claiming that she had felt pressurised into agreeing the order in the previous proceedings and now considered it was not in the child's interests.

Matters became increasingly acrimonious, with each parent making allegations about the other's care and father assaulting mother's partner. At this point mother stopped contact and applied for a variation of the order; father made his application for a penal notice. The court ordered contact to restart and after a contested hearing made an order for shared residence (contrary to the recommendations of the welfare report), albeit in the same terms as the previous contact order. Father's application for a penal notice was dismissed.

Within a few weeks father brought further proceedings, again alleging that mother was not complying with the order and seeking a penal notice. The court made some minor adjustments to the order and adjourned the application for a penal notice with liberty to reapply within six months. The case has not yet come back again.

Opinion will no doubt vary on whether the outcomes in these very different cases were 'unfair' to the non-resident parent. We consider, however, that there were only two which could clearly be described in those terms, in one of which (407, above), since the non-resident parent had succeeded in getting contact going again in line with the order, he may not have been too concerned about getting a penal notice. Only one case (1033, above) would seem to fit the stereotype of the obstructive mother who defied a contact order for reasons which were not considered to be valid, suffered no penalty and succeeded in getting contact reduced even though this was not considered in the interests of the child.

## Outcomes and the position of the resident parent

Cases in which contact parents did not achieve what they sought at the outset constituted, as we reported earlier, only a small fraction of those which ended with staying contact and were far outnumbered by cases in which the resident parent respondent was known to have opposed either staying contact (17), unsupervised contact (15) or any contact at all (30). We conclude this chapter, therefore by examining these 62 cases.

### Cases in which the resident parent had initially opposed any face to face contact

There were 30 cases in which resident parents, all but two of them mothers, initially opposed face to face contact. Almost all these cases (23; 77%) were finally resolved by consent and of those which were not none had a contested final hearing on the principle of whether there should be contact; all revolved around the quantum of staying contact. These resident parents had therefore moved, or been pushed, a considerable distance in the course of the proceedings.

The majority of these cases (25; 83%) involved allegations or concerns about serious welfare issues: domestic violence (14; 47%); child abuse or neglect (13; 43%); drug abuse (10; 33%); alcohol abuse (12; 40%); mental health (10; 33%); or fear of abduction (4; 10%). Indeed most (19, 63%) raised more than one issue. For instance, of the 14 cases with allegations about domestic violence there was only one where this was the only issue. Eight raised concerns about child abuse or neglect, eight about alcohol abuse, seven mental illness, five drug abuse and two fear of abduction.

Two questions then arise. First, how adequately did the court address these potentially major concerns? Second, why did resident parents drop their opposition?

### *The assessment and management of risk*

#### *Restarting contact*

At the point the application was made no face to face contact was taking place in any of these cases. On the whole the court seems to have adopted a cautious approach to getting contact started. In most instances there was no contact until either there had been a report from a Cafcass officer or other professional (11) and/or there had been a contested interim hearing (6). Further, although eight of the 12[29] cases where contact was restarted earlier involved serious welfare issues, there were only two in which contact was restarted on an unsupervised basis. Close analysis of the two exceptions suggested there was only one which, in our view, may not, at this point, have been treated with appropriate regard for the potential risks involved.

Case 351. The parents had been separated for three years. Although the marital relationship was acknowledged to be violent the children, aged 6 and 4, had been having overnight contact with their father until 4 months before the application was brought. All contact was stopped after father took an overdose of drugs and alcohol while the children were staying with him. Father was also facing charges of sexual abuse of his sister when both were children. At the first hearing, at which mother was not legally represented, it was apparently 'agreed' that staying contact would resume and the case was adjourned for mediation. One has to wonder whether the mother was under any kind of pressure to agree, particularly since it was later said she was suffering from depression. Once away from the court building mother changed her mind and orders were given for indirect contact only pending a welfare report.

The transcript of one of the cases in which contact re-started at a contact centre is indicative of the pressure that resident parents can come under to agree some contact.

Case 619. There were two children aged 1 and 3. The parents had recently separated. Although mother alleged a history of domestic violence initially contact was at the family home, supervised by her. When this proved difficult to manage mother agreed to father having the children at his home but stopped it fairly soon on the basis of the children's behaviour and her concerns about father's ability to care, including drug and alcohol abuse. At the first hearing the parents agreed, in in-court conciliation, to a contact centre, although father was reluctant for contact to remain in the centre until there had been a welfare report (which was estimated to take 16

[29] In one case the point at which contact restarted was not known

weeks) and succeeded in getting an interim hearing at which the judge was very critical of mother for not agreeing to a contact centre when it had been raised in mediation and solicitors' negotiations:

> Judge*: (Father's solicitor) asked you earlier on about the letter he wrote on (X date) suggesting contact with the father and you did not agree to that. Why did you not agree to that?*
> Mother*: I wanted the court to decide.*
> Judge: *Just a minute – you came to court and agreed contact at the contact centre. That was two months after the possibility of contact at the contact centre was put to you. Why did you not agree it in March but agree to it at the conciliation hearing in May?*
> Mother: *Because my solicitor told me I would have to agree to it, because that is what the court would give him.*
> Judge: *You have denied father contact for two and a half months, though, quite unnecessarily.*
> Mother*: I do not think it is unnecessary at all.*
> Judge: *Well, it was, because you subsequently agreed to the contact at the contact centre.*
> Mother*: I was not happy to agree to that. My solicitor at the time advised me to agree, because they said the court would look badly on me if I did not. I have since then changed solicitors.*

The transcript of the first hearing also indicates that the solicitor may not have been the only source of pressure. Mother having given way on the contact centre the Cafcass officer appears to have been trying to persuade her to agree to less limited contact, judging from her response to the concerns outlined by mother's lawyer:

> *But is that going, at the end of the day, to be a justification for the father to have such restricted contact, when it is so important to children's relationship with the absent father to see the absent parent frequently. Two hours once a fortnight is not very much.*

### *Domestic violence*

Only four of the 14 cases in which domestic violence was an issue had a finding of fact hearing (although one [case 619 above] did have a contested interim) and hearings were listed in a further two cases. In the first of these the hearing was cancelled after the father admitted the violence. In the second the court heard no evidence but noted that the parties had agreed they had a '*volatile relationship'* and that the resident mother accepted that *'the behaviour of father towards her should in any event have no bearing on contact*'. Given that the welfare report in this case subsequently recommended the father should undergo anger management counselling, we have to question whether the issues had been dealt with adequately in court.

In three of the remaining cases the facts were not in dispute, being either proven in criminal proceedings (2) or admitted (1). Hence a hearing was arguably not necessary. In another two domestic violence was not the main issue and the court did have access to risk assessments from either Social Services or a psychiatrist. There were, however, three cases in which there was neither a finding of fact hearing nor an explicit risk assessment, at least one of which gave us grounds for concern.

Case 204. The parents had been separated for 10 years. Although the marital relationship was said to be violent and mother had concerns over father's mental health, the children, now aged 13 and 11, had had regular staying contact. Indeed recently the father had lived in the family home for a few months, apparently as part of his parole conditions after serving a prison sentence for assault (not on a family member). Contact became problematic after this with mother reporting he had threatened to kill her and her son by a previous relationship. After a police warning father stopped the direct threats but allegedly continued to tell the children that they would be coming to live with him soon because their house would be blown up and mother and her son would no longer be around. Concerns were raised by the younger child's school about her behaviour.

Mother stopped contact but subsequently told the Cafcass officer that she was not necessarily opposed to contact *per se*, but wanted advice as to whether it was in the children's best interests. Whether she got this from her conversations with the officer cannot be ascertained. However there was no evidence of it in the welfare report, which merely concluded that since the children wanted to see their father, given their ages it was not feasible to restrict contact. There was no assessment of the seriousness of the risk or the impact on the children's emotional well-being of father's behaviour. Nor was father required to give any undertakings or to engage in any counselling.

In the main, however, even if domestic violence issues were not addressed head-on, the initial approach to contact seemed to be fairly careful, albeit in the context of promoting it. As noted earlier, contact was almost always restarted on a supervised basis and welfare reports ordered. This approach is also exemplified by two of the cases which did have a finding of fact hearing, in which the court did not find the allegations fully proved but nonetheless did not immediately order unsupervised contact. For example:

Case 927. There had been no contact since the parents had separated, some three months before, mother going into a refuge with the children, aged seven and four. The mother said she was not opposed to contact eventually, but felt it was too soon to start, alleging that father had been violent to her, threatening to the children and found it impossible to control his temper. She was also concerned about his psychological state, since he had attempted suicide. Father admitted 'rows' but denied violence, claiming that mother was the aggressor.

The judge's finding was as follows:

> *On the evidence that I have heard today there is no way in which I could conclude that there has been any physical violence directed towards you of a scale and character which would justify my withholding contact for these children to their father.*

The parties subsequently disputed what this actually meant in terms of the domestic violence allegations, and the Cafcass officer, who was similarly mystified, had to apply for a transcript of the judgement. The court ordered contact to restart at a contact centre, father giving an undertaking not to enter the area in which mother was living, other than for contact.

In case 619, described above, the judge also adopted a fairly cautious approach although he was clearly not convinced of the validity of mother's objections, which he considered had been undermined by her allowing contact post-separation:

> *The allegations that the mother made as to incidents that occurred pre-separation, followed by her allowing contact post-separation without supervision and then stopping it and then refusing even contact at the contact centre, until she was put into a position where she felt she had to agree to it; all of this smacks to me of a mother who is trying to avoid the father having contact or if he has contact, reduce it as much as possible.*

Nonetheless he ordered contact to continue at the contact centre, moving onto father being able to take the children out, but not to his home until there had been a welfare report.

In one of the cases where there was a finding of fact hearing, however, the approach was less tentative and arguably risky, even though the court had found the mother's allegations proved in full. The judge also found that father had an '*anger management problem'*; that he had been '*heavy-handed*' with the child, who was four, that there had been two incidents of '*physical chastisement'* and one of '*forcible removal'*. Nonetheless, he concluded, this had '*no bearing'* on the contact application. An order was made for contact, initially supervised, but only by the mother, moving on to unsupervised. A welfare report was ordered, but focusing on mother's application to remove the child permanently from the jurisdiction and subsequent contact, not on the advisability of there being contact *per se*.

There were two other exceptions, one of which was referred to earlier (case 351) where an unrepresented mother agreed unsupervised contact at the first hearing. In the other, in which the court took a very 'robust' attitude to the mother, it was unclear how far her allegations, which appeared to have been dismissed, had ever been investigated.

Case 706. An order had been made for staying contact in proceedings over two years previously. Contact with the girl, (aged 7) had ceased seven months prior to proceedings and with her brother (8) just a few weeks ago. The mother said that she had only agreed to the order being made because she was being harassed by father who had been violent to both her and the children and that the children, particularly the girl, no longer wished to see him because he treated them roughly.

None of these issues were explicitly addressed either by the court or the welfare report, nor was there any reference to the domestic violence allegations having been dealt with in the previous proceedings. The implication, from the welfare report, however, was that they were fictitious. The fact that mother was said to be suffering from an unspecified mental illness for which she refused to seek treatment may be relevant here. The magistrates took a very hard and determined stance throughout. Mother was arrested after failing to turn up to the first hearing and was then fined for breach of the order. The notes of a subsequent hearing record that the court had considered changing residence – and presumably conveyed this to mother. The Cafcass officer noted that she had considered recommending more contact than previously ordered but had not done so in case this jeopardised the contact which had been agreed.

*Other concerns.*

In 11 of the 25 cases in which there were serious welfare issues domestic violence was not raised as an objection to contact (although in three it was alleged to have been a feature of the parental relationship). Five of these involved allegations of

child abuse or neglect, five drug abuse, four alcohol abuse, three mental health issues and two threats of abduction. Only five cases involved a single issue.

In our view all the cases in which child protection was an issue appear to have been handled with due regard both for the child's safety and the resident parent's concerns, with investigations and risk assessments conducted where appropriate, although it has to be acknowledged that the resident parents themselves might take a different view. One mother, for instance, opposed the Cafcass officer's initial plan for progressing contact from observed to supervised, to unsupervised, to staying, and there was a full hearing on the matter, the case then proceeding by way of a series of reviews.

Case 905. The child was almost 6. His parents had separated eight months previously. Mother stopped contact after father was convicted of downloading child pornography from the internet, expressing concerns that the child was at risk, or might have already suffered abuse. He was reported to be having nightmares, wetting the bed and to be afraid of male strangers. Professional opinion was that father did not pose a risk to the child but mother remained concerned and proposed indirect contact only. The court had evidence from a police interview with the child and father's pre-sentence report from the Probation Service and ordered contact as per the Cafcass officer's recommendations. Mother agreed to meet with the facilitator of the sexual offenders' programme father was attending as part of his community rehabilitation order and appears to have been somewhat reassured. Contact was restarted and despite the long gap, progressed well and at length a consent order was made for staying contact.

Five cases raised issues of drug abuse. None gave us any concern over the way the issue was handled: in three the court ordered drugs tests, in one the father admitted using cannabis, in the fifth father's past drug use was only one of many other issues and was regarded as historical.

In four cases alcohol abuse was the issue. The only case in which this was the sole concern was, surprisingly, also the only one in which it does not seem to have been treated as seriously as it possibly warranted.

Case 202. The child was 9. His parents had never lived together and their relationship had ended 8 years before. There had been intermittent visiting contact for most of that time although it had been suspended on many occasions, according to mother because of father's excessive drinking and irresponsibility. At the point the application was made there had been no contact for about 6 months, after the child was injured in circumstances which, to mother, confirmed father's lack of due care. Mother refused to take part in mediation or to restart contact at a contact centre. Father denied mother's allegations and although admitting he had been disqualified from driving the previous year claimed he only been '*just over the limit*'. He also filed a report from his GP confirming that he had never received any treatment for alcohol addiction.

No agreement was reached in in-court conciliation and a welfare report was ordered. The Cafcass officer observed contact, which demonstrated the strength of the child's attachment to her father, and took the view that in the '*absence of any independent evidence'* that father could not control his alcohol consumption he should be afforded the opportunity to live up to his promise to abstain completely during contact. She recommended, however, that if there was any indication that this was not happening

the court should order liver function tests. Mother agreed to unsupervised visiting contact restarting on the basis of father's undertaking.

Two months later mother again suspended contact, claiming that father had twice turned up drunk. Father denied this, but admitted that on each occasion he had '*had a skinful'* the night before and might therefore still be affected by or smell of alcohol. According to the notes of the next hearing the magistrates considered ordering tests and/or having a hearing to adjudicate on the facts. Instead both parents seem to have been given a lecture, father on his responsibilities and mother on her duty to facilitate contact. Indeed it appears that mother was even warned of the court's powers to change residence. The parents were sent away to '*think about it'*.

By the next hearing matters were agreed. Father gave an undertaking not to drink the night before, as well as during, contact. Contact then proceeded without further incident and staying contact was agreed, to take place at the home of an aunt but not supervised by her.

None of the other cases seemed to us to raise serious issues about the assessment and management of risk.

### *Reaching agreement*

Twenty-three of these cases (77%) were resolved by consent orders or agreements. Moreover none of the rest involved a final contested hearing on the issue of whether there should be direct contact; the disputes by this point were only about the details.

In almost all cases the process by which the resident parent was shifted from opposing any contact to 'accepting' staying contact was slow and often difficult and it is clear that in at least some there had been no change in attitudes, merely in position. In one case, for instance, the matters in formal dispute were whether there should be midweek visiting contact and whether father should give an undertaking not to take the child (who was 3) into pubs. In arguing mother's position her solicitor said:

> *This is a mother who really, if she were allowed to have her first wish, which she accepts is not what is going to happen, is that she would not want (the child) to have contact with his father and that is because of father's antecedent history and the assault on her.*

Only one case, in which the parents had recently separated and by the time the case came to court were considering reconciliation, was settled at the first hearing, with one other (case 204, whose management we questioned earlier) being completed within six months. Of the remaining 28:

- Well over half (17) lasted for over a year and two more than two;
- 14 had a contested interim hearing;
- 13 had more than one welfare report although none of the children was separately represented;
- In 11 of the 27 cases where the decision to start face to face contact was not coterminous with the end of the proceedings interim contact did not progress smoothly.
- In two cases the non-resident parent applied for a penal notice to enforce an interim order.

In general, admittedly, the progress of these cases to their final outcome seemed somewhat less tortured than those which ended in only visiting contact – which is presumably why the 'distance' travelled was greater. Some, however, were extremely difficult and needed a lot of persistence on the part of the court and Cafcass to bring them to what might be regarded as a 'successful' conclusion. As we reported in the previous chapter, the preferred approach was conciliatory, 'nursing the case' to allow for a degree of trust to be established, children to re/establish relationships and overt parental hostility to diminish. Usually, however, in the context of trying to get contact established and moved on.

Case 357. The parents had separated when the case child (now 8) was 4, and his sister, not subject to the proceedings, was 15. Father moved many miles away and contact largely seems to have taken place when he visited the area. Mother subsequently criticised the quality of this contact, father's commitment and reliability, his lack of care and supervision; alleged he had used illegal drugs; and expressed concern that he had photographed the child and her friend partially clothed. Father had a history of mental illness and was said to have a 'short temper' and 'mood swings'. He had also had a series of relationships with women he had met through the internet.

On father moving back to the area some contact appears to have taken place. This ceased after an argument when father asked for overnights. By the time proceedings started there had been no contact for 8 months and according to mother the child was not interested in her father and did not want to see him.

Mother refused mediation and in-court conciliation. The Cafcass officer interviewed the child and concluded that although expressing '*indifference*' she was probably experiencing split loyalties and might enjoy contact. Father, however, would need to appreciate the sensitivity of the situation and the patience needed to get his daughter '*back on board'* and both parents needed to make an investment for the sake of the child.

Mother refused the officer's offer to act as '*ice-breaker'* between father and child. The court made an order for observed contact followed by such contact as Cafcass considered appropriate. By the second report unsupervised contact had been set up, though handovers were difficult and the child was often exposed to parental arguments. These seemed to gradually diminish and although initially reluctant the child agreed to try overnights. By the final hearing the only matters in contention were some concerns about the arrangements.

In this case once the power of the court had been used to get contact started the mother co-operated. Where a resident parent was uncooperative, a harder approach might be taken. There were, for example, at least three cases in which threats of a change of residence were used to bring the parent into line. One of the transcripts examined contained this warning from the judge to the mother, before sending her out to discuss matters with her solicitor

> *Now just reflect upon this. Sometimes the court is faced with a parent who obstructs contact to a parent who wants to have contact. Sometimes the court has to find a way of breaking that particular, or overcoming that particular problem. One of the ways the court will always consider as a last resort is putting the children with the other parent so that the residence would change from the one parent to another, if the court is satisfied that the other parent is more likely to allow the children to grow up knowing both parents in*

> *the way that they are entitled to. I want you to reflect on that while you are talking with (your solicitor), alright?*

Similar warnings were found in welfare reports, as in the case described below.

Case 935. The index child was 20 months at the start of the proceedings (which lasted 2 years) and his brother was almost 3 years old. The proceedings took place in the context of a criminal prosecution of the father (followed by an appeal) for an assault which had ended the parents' relationship a few months earlier. The violence, which father denied until he was found guilty in the criminal court, was witnessed by the children, who had also had to be forcibly removed from father by the police, mother having fled the house.

Father applied for residence or contact, alleging that mother could not provide the children with a stable home life since she was prone to violence, self harmed, took illegal drugs and drank to excess. Mother objected on the basis of father's violence (which had also led to proceedings for a non-molestation order some 4 years before), his abuse of alcohol, and physical abuse and neglect of his son by a previous relationship.

The court ordered a welfare report and, several months later, presumably on the verbal advice of the duty Cafcass officer, observed contact and, if recommended, contact at a contact centre. Both parents gave undertakings about violence. Father subsequently applied to have mother committed to prison for breach of her undertaking that her new partner would not be involved with contact after an incident where he was allegedly threatened outside the contact centre. This was dismissed.

After the criminal proceedings concluded the parents agreed to start unsupervised contact, with handovers at the police station, father having given an undertaking not to consume alcohol before or during contact and not to take the children to licensed premises. One contact was missed, father applied to the court for a compensatory visit. This was not granted.

Six months on the parents agreed staying contact. Almost immediately father applied for a penal notice after a contact was missed because, according to mother, the index child refused to go. The court adjourned this application, varied the order to visiting contact, asked the Cafcass officer to observe the child's demeanour before contact and ordered that there should be compensatory contact for any missed sessions. Another contact was missed, mother claiming she had misunderstood the order. Father applied for his penal notice application to be restored. Again the application was adjourned. Six months later staying contact was again ordered and six months after that a consent order was made.

There were five welfare reports on this case. At the start the Cafcass officer seems to have taken a cautious approach, recommending a finding of fact hearing. However although this was never ordered, and the papers in the criminal proceedings never released, all subsequent reports were pro-contact, including staying contact, with a recommendation that the parents explore sources of help to enable them to deal with their conflict. By the end the reports had become quite critical of mother. Her claims that the index child was anxious about contact and reluctant to go were dismissed, there were references to contact being 'sabotaged' and veiled threats as to what might happen if this continued:

> *If contact is continuously sabotaged this may become detrimental to the emotional wellbeing of the boys and may constitute them being exposed to the likelihood of significant harm and would require further intervention if this proves to be the case.*

In other cases the 'straight-talking' was less threatening, but nonetheless designed to convey to the resident parent, unambiguously, their responsibility for facilitating contact. One Cafcass officer, for instance, wrote to the mother to say:

> *I am concerned that (the index child) in particular may feel he is letting you down if he has a good time during contact. Your influence will have a major impact on the children's attitude to their contact*.

## Cases in which the resident parent unsuccessfully opposed unsupervised contact

In 15 cases the resident parent (all but 2 of whom were mothers) had not opposed contact *per se* but had initially wanted this to be supervised. Only three did not involve any serious welfare allegations or concerns. Indeed in one of these the child was living with her father because of her mother's alcoholism but though mother was now 'dry' father was still unwilling to set up unsupervised contact. In one of the other two cases the mother expressed anxiety about father's ability to care for a very young child, born after the parental separation. In the third, which again concerned a baby, unfortunately there was no information on file about mother's reasons because the parents reached agreement in the course of the welfare report.

The issues in the remaining cases concerned: domestic violence (7); child abuse or neglect (5); drug abuse (7); alcohol (5); mental health (2) and abduction 6), with eight having issues in more than one area. All but one of the cases in which domestic violence was an issue involved other serious concerns.

### *The assessment and management of risk*

#### *Restarting contact*

At the point the application was made there was no face to face contact in any of the cases involving serious welfare issues. Typically, as we found in cases where any contact was opposed, contact usually resumed on a supervised, or at least observed, basis and unsupervised contact did not begin until a welfare report had been submitted. There were three exceptions, however, two of which seemed to us to entail a degree of risk.

> The marriage had recently ended with allegations of domestic violence and threats. Mother obtained a non-molestation order and an interim residence order. Father applied for residence and contact. At the first hearing on his application the parents agreed for father to have unsupervised visiting contact, for a minimum of seven hours a week. No specific provision appears to have been made to ensure that handovers were safe.
>
> The parents had been separated for several years and at one point had had a shared residence order. This broke down because father refused to hand the children over and the order was converted into sole residence to mother. Staying contact continued until father again refused to let the children return, for which he was sent to prison. On release he sought the resumption of

contact with a view to returning to a 50:50 arrangement but refused mother's stipulation that this should initially be supervised and applied to the court. Mother's position was that there should be a trial period at a contact centre until father could demonstrate that he could be relied on to comply with court orders. There was a contested interim hearing which ended with the court ordering the resumption of staying contact and making a prohibited steps order preventing father removing the children from mother's care other than for the purposes of the specified contact.

*Cases involving allegations of domestic violence*

None of these cases had an early finding of fact hearing, although in one case findings were made (in favour of the resident mother) at what was to have been the final hearing. One hearing was listed but cancelled when father gave an undertaking in separate proceedings for a non-molestation order. Apart from this case, however, there were three others where at least some violence had been either admitted or proved. In one of the remaining cases it seemed quite likely that the allegations were fabricated or at least exaggerated. In the final case there had been previous proceedings in which it was possible that the issues had been fully tested. Hence we cannot point to any cases where an apparent lack of investigation of the facts produced a potentially dangerous outcome at the end of the day, even though, (see, for example, case 506 below) the decisions made on the basis of those facts sometimes surprised us. All these cases had welfare reports.

*Other concerns*

Cases which raised concerns other than, or as well as domestic violence, were typically addressed by some form of specialist input. Thus in four of the seven cases involving allegations of drug abuse the court ordered hair tests, while there were liver function tests in three of the five where alcohol abuse was an issue. Two cases had reports from Social Services. There were only two cases where the Cafcass officer was the only professional involved although there was one case without even a welfare report. In this case father had just come out of prison, professing his determination to live a different life. Mother's sole concerns at the outset seemed to be about his (previous) drug abuse. Contact resumed when paternal grandmother agreed to supervised contact and since there was no further allegations of drug abuse on the file one can only assume that mother was satisfied that father was still 'clean'.

## *Reaching agreement*

Only three of these 15 cases in which the resident parent had initially opposed unsupervised contact went to a contested hearing. Moreover none of the three contests were on the issue of supervision and only was one on whether there should be staying contact. In one further case the father did not turn up to the final hearing. All the others (11) were resolved by consent orders or agreements.

As we reported in cases where resident parents were opposing any contact, these cases typically went on a long time, with none completely resolving at the first hearing and only two at the second. Seven went on for more than a year and one more than two. Six had a contested interim hearing; including one which went to appeal. Five had more than one welfare report and in one the child was separately represented. Although there were only three cases in which, once contact restarted,

it was disrupted, in one of these the non-resident parent applied for a penal notice to enforce an interim order (although this was subsequently withdrawn).

Similar themes emerged: an overall emphasis by Cafcass and the court on establishing and progressing contact; the preference for encouragement and persuasion wherever possible but a readiness to criticise resident parents who were seen to be uncooperative and/or not sufficiently committed to moving contact on, even where their original fears might seem to be well-grounded.

Case 601. The child was 5. Mother alleged that the relationship, which had ended two years previously with a non-molestation order, had been violent. Nonetheless contact was established but stopped after about a year. Mother claimed that she had '*given father many chances to behave normally but he had abused them, continuing to abuse and harass (us)',* not because of '*anything to do with the child'* but his *'obsession'* with her. The trigger to contact stopping was an incident in which mother claimed the child was left unsupervised outside the house, but she also voiced concerns about father's mental state and his sometimes harsh treatment of the child. At the start of the proceedings father was being prosecuted for harassment, for which he was later convicted. Father denied all the allegations.

There was no finding of fact hearing, the Cafcass officer considering that although it might '*establish some clarity'* it might '*do little to progress contact other than raise the temperature in an already inflamed situation'*. There were delays in allocating the case in Cafcass; contact at a contact centre was ordered. The Cafcass officer then recommended that contact move out of the centre, reporting that the parent/child relationship was warm, father's behaviour appropriate, the child was not showing any inhibitions in his presence and he would like to go to father's house. Mother, she opined, must take credit for '*not conveying her very negative views'* about the father to the child. A consent order was made, father giving an undertaking in respect of violence and harassment. Four months later staying contact was introduced, for one overnight a fortnight with visiting contact in the intervening week.

Father then asked to extend the stay to two nights. Mother refused, alleging father's motivation was to make her life '*as difficult as possible and control me'* and that while she had endeavoured to be flexible over contact times and even offered additional sessions in the holidays, father had not reciprocated and continued to be verbally abusive. She was prepared to offer an additional overnight during the week but claimed that the child, who was said to be exhibiting disturbed behaviour – bedwetting, nightmares, aggression - did not want to stay for more than one night and needed time to get used to staying. The court ordered an addendum welfare report but unfortunately the original officer was no longer in post. The new one was unable to see the child (for reasons which were disputed) but clearly did not accept mother's arguments and recommended an extension. Mother objected to the report and a further one was ordered, to include an interview with the child.

The child confirmed that he did not want to stay for more than one night, but the officer suggested this did not represent his true feelings and advised mother that she '*must be careful not to project her fears and anxieties onto the child'* and '*must accept father will always be involved in the child's life and must re-examine her changing relationship with father and recognise that he perhaps may no longer pose a threat to her safety or the child's'*.

Nonetheless she concluded that it was not possible to extend contact at this point and that father had to accept what the child was saying and '*try to build the confidence of mother and child so they will perhaps agree to more contact in future'*.

Father did not do so but persisted with his application and was successful: the court ordered two nights contact.

Contact over the next few months seems to have been fraught and father asked for an earlier review hearing claiming that some contacts had been refused and telephone contact was sabotaged. Mother denied this but claimed that the child was distressed about contact, which she felt was due to the fact that that '*however much he loves his father he is also frightened by him and his continuous temper and feels he cannot open up to him*'. The order was continued and a further welfare report ordered, but again the case could not be allocated for some time. The court went ahead without and appears to have heard evidence from both parents, after which mother conceded and a consent order was made. The case had lasted for just over two years.

The transcript of the final hearing reveals mother's dissatisfaction with both the outcome and the way the case had been handled:

> Judge: *Because he lives with you, he should spend a reasonable amount of his spare time with his father.*
> Mother: *That is not what (the child) wishes, though, so if this had all been done properly in the Court, had been written properly and his school had been spoken to and (the child) had been spoken to, then you might be able to think about his wishes, but because it hasn't and you can't – but I know him well enough to know what makes him happy.*
> *Judge: Well, I realise this is what you are saying, but you do not expect me to believe that you are entirely impartial?*
> Mother: *Well, I am actually, because that's what makes (the child) happy.*
> Judge: *I am sorry, but you are the mother and this case has a history, and people who see these cases regularly - and I assure you I am one of them - become very aware that children are very adept at telling the parent they are with at the time what they think that parent wants to hear.*
> Mother: *But he actually told (the Cafcass officer) he did not want more contact, in the last report.*
> Judge: *Well, I have re-read the Cafcass Report and I have to say I am not entirely convinced that (the child) wasn't expressing the difficulty he faces in divided loyalties between his parents.*
> Mother: *Well, I am just saying what I think. I obviously know him and one night will be fine, but I don't want to agree to any more than that*.

The only case in this group which was contested on the question of staying contact similarly involved allegations of domestic violence. The case was also unusual in that the court did make findings of fact on the violence, ruling in favour of the resident mother.

Case 506. The child was 4. His father had a long history of drug and alcohol abuse, convictions for assault, and had served a prison sentence for stabbing a previous partner. He had no contact with the children of that relationship. The parents had separated three years previously and although mother alleged that father had been violent to her she agreed, with some misgivings, to unsupervised visiting contact and, on her account, was subsequently pressurised into agreeing staying contact.

Contact broke down after mother told father she was planning to move from the area and that although contact would continue as before, she was not going to give him the address. An argument ensued during which father was said to have made

threats, including abduction. Mother then insisted that contact should be supervised. Father tried this but hated it, and went to court.

At the first hearing a return to the contact centre was agreed, and then, in the course of the welfare report, unsupervised visiting, gradually increasing in duration. Overnight contact became the issue, with mother's concerns revolving around father's admitted continuing use of cannabis, her suspicions of other drug use and excessive drinking and his violent temper. The court ordered liver function and drugs tests and a psychological assessment. The tests confirmed cannabis use but were otherwise clear. The psychologist concluded that father did have a personality inclined to anger and violence which had been exacerbated by substance abuse. However his lifestyle had now quietened, he was capable of abstaining and the only risk to the child was if he did not.

The court concluded that father was a regular user of cannabis but not a heavy or frequent user of other drugs. He had reduced his use of alcohol. He had been violent in front of the children and the level of violence was greater than he had admitted. However the current level of contact was considered to be inadequate. Father was committed to the child who had not come to any harm in his care. Father also recognised the importance of not being under the influence of drugs or alcohol while responsible for the child. An order was made for overnight contact, father giving an undertaking that he would abstain from using drugs or alcohol while the children were with him.

The case was adjourned for six months when a welfare report confirmed that contact was going well and although mother still had concerns, she was prepared to agree a final order for overnight contact. The undertaking did not appear to have been continued.

### Cases in which the resident parent had initially opposed staying contact

Finally, there were 17 resident parents (including 4 fathers) who had only ever been opposing staying contact. The children in these cases were in the main quite young, with 11 index children being under the age of five at the point the proceedings began and seven being under three. In most cases (12) some contact was taking place at the point the non-resident parent made their application and in the remainder in all but one there had been contact within the past three months. In all five cases the resident parent agreed to contact re-starting by or at the first hearing, with only one case involving a period at a contact centre.

All these cases resolved with a consent order or agreement. However otherwise they were hugely varied. Thus most did not involve serious welfare issues but eight did[30]; five having more than one. In two cases there were welfare issues in the background although they were not being raised as an objection to staying contact. Some cases settled very quickly – two at the first hearing and a further five without a welfare report having been submitted or, in three cases, even ordered. However five cases lasted for more than a year and one more than two. Five had multiple welfare reports, with one child being separately represented, and seven had contested interim hearings. One case went to the high court. Another had a penal notice attached to an interim order.

[30] Domestic violence (3); child protection (4); drug abuse (3); alcohol abuse (4); mental illness, (3); learning difficulties (1); abduction (1).

*Cases without serious welfare concerns*

In two of the nine cases where serious welfare concerns were not raised it was not possible to establish why staying contact was being opposed. Of the rest the child's reported anxiety was the most common reason (3) followed by the child's age (2 cases, both children being under 3) and the breakdown of the previous attempt at staying (1). In the remaining case, while mother cited some concerns about the inadequacy of father's previous care overnight her main argument was that the child, who was not yet two and still came into her bed when she woke in the night, would find it confusing to find father's new partner in bed with him. She did admit, however, to having initially stopped contact because of her upset at finding out that father had formed a new relationship and that therefore her hopes of reconciliation would not be realised and the suspicion must remain that this was a key driver.

Most of these cases resolved fairly readily, two at the first directions hearing after conciliation and four either during the preparation of the welfare report or without a welfare report being prepared. Three, however, were more tricky, requiring more than one report and in one case a contested interim hearing.

Case 802. The child was $2^{1/2}$. The parents had only separated 6 months before. There had been an isolated incident of alleged violence at the point of separation (of which father was subsequently acquitted) but although no contact had been established in the immediate aftermath it did eventually start and mother was not raising it as an obstacle. She was, however, concerned about the child's behaviour after contact.

Observation of contact by Cafcass indicated that it was a positive experience for the child who was, however, noted to be clingy and quiet afterwards. After the Cafcass officer had '*explained why this might be*' the parents agreed to try mediation with the officer, which produced an agreement to move towards overnight contact. This broke down almost immediately, mother claiming the child was having tantrums, bedwetting and '*playing up'* at nursery. The court ordered an addendum report; mother agreed to restart overnight contact but suspended it again because of the child's '*distress*'. The parents seemed to be unable to communicate and each blamed the other for the impasse.

The welfare report concluded that the difficulties in the parental relationship were '*clouding their judgement about each other's intentions'* and that mother appeared to be '*transferring her negative experiences of father and his family to the child*'. There was nothing to indicate that staying contact should not take place. No agreement was reached and the case was listed for a final hearing, the file notes made by the legal advisor to the magistrates noting that:

> *We are dealing with an understandably anxious mum with a young child who appears to be transferring the blame for what is pretty normal behaviour for a three year old boy onto overnight contact. She appears not to have considered other factors which will affect him, including the uncertainty she has inadvertently created around contact. There is nothing to suggest Dad is not an appropriate person to have contact and I think we are going to have to make an order in these terms*.

Presumably the court's interpretation of the situation was conveyed to the mother and a consent order was made.

*Cases where there were serious welfare issues*

On the whole, however, it was the cases involving welfare issues which were the most difficult to resolve, with only one not having a welfare report and six having more than one report and/or a contested hearing. This was scarcely unexpected given the seriousness of the issues in most. What was more surprising, perhaps, was that some of these resident parents were not opposing any contact or wanting to put more restrictions on it. Four cases, for instance, involved non-resident mothers who had had severe, undisputed problems with drugs, alcohol or mental illness or, in one case, a partner who was a Schedule 1 offender. In fact in the course of proceedings three of the resident fathers in these cases did raise more objections to contact when the mother breached the terms of an undertaking (1); was arrested for drunkenness (1) or was actually drunk during contact (1).

As befits the nature of the concerns the approach of the court and Cafcass was typically fairly cautious, testing out the safety of the arrangements, and it was unusual (although there was one instance) for any criticism to be voiced about the resident parent's lack of support for contact.

There were only two cases where arguably the concerns were not adequately investigated.

Case 923. The children were aged 2 and 1 and lived with their mother. Their parents had separated fairly recently. According to mother, the marriage broke down because of father's displays of temper and his physical mistreatment of her and the children and disregard of their needs. She initially agreed to quite extensive staying contact but quickly changed her mind because of concerns about father's drinking, the behaviour of various friends who came to his house, the presence of 'fierce' dogs and father's lack of attention to the children's safety. She sought to reduce contact to visiting 8 hours a month. Father refused; contact stopped. Father then applied to court for weekly staying contact. Unsupervised visiting contact, with handover at a neutral venue, was agreed in in-court conciliation on the first court appearance, with father promising to institute some basic safety measures. This agreement broke down, but parents returned for further discussions with Cafcass. This time Father agreed to give undertakings in relation to all mother's concerns and it was agreed that staying contact would resume.

There was no welfare report in this case. In the second a Cafcass officer was appointed but was clearly somewhat mystified as to what the case was really about.

Case 370. The child was 3. The parents had been separated for 9 months. There had apparently been weekly staying contact, until the parents had a row. Mother alleged that father had been drunk at the last contact; that he was a drug dealer; that he had made threats against her and sent his friends to intimidate her; that he was '*controlling*'. She said she was not fundamentally against contact but did not want to resume staying contact. For his part father said that mother was a prostitute who used drugs and was being prosecuted for criminal damage to his house.

Initial contact at a contact centre was agreed (on the understanding that father would drop the charges for criminal damage). This was reported by both parties to have gone well but before recommending that contact move out the Cafcass officer suggested a review at which the court might need a clearer picture of the issues and the risks:

'*one would need to be clear about the level of aggression that may impinge upon the child and to know if there is any likelihood of him being supervised by a parent under the influence of drink or other drugs'*.

There was no indication that this ever happened. Mother agreed first to unsupervised and then to staying contact, although she continued to resist a parental responsibility order. She did not turn up to the next hearing and a penal notice was issued to secure her attendance. At the final hearing she agreed parental responsibility. Mother was unrepresented throughout. The order was returned to the court address unknown, raising the possibility that having conceded throughout the case mother had simply moved away. However since the case did not return to court the outcome, like so much of the case, remains unknown.

## Summary

Staying contact was the most common outcome of proceedings, accounting for 139 cases. This finding is consistent with the interview data, which showed a clear preference for overnight contact.

Overall cases ending in staying contact appeared to be a less problematic group. Less than half involved disputes about whether there should be any face to face contact, whether it should be unsupervised or whether there should be overnights. At the point the application was made direct contact was known to be taking place in 45% (63) three-quarters of non-resident parents had seen their children within the past three months. Fifty-eight per cent (81) did not involve any serious welfare concerns and 60 (43%) had no professional evidence.

However a substantial minority presented more significant challenges. Of the cases where the dispute was about a major issue (the principle of contact, supervision or staying) 81% (39 of 48) involved serious welfare allegations/concerns. Over a third of cases went on for more than 12 months, with the longest taking more than three years.

The majority of applications which ended in staying contact were brought by non-resident parents (127), most of whom were specifically seeking staying contact from the start (111). The available information indicated that most of these applicants were also successful in terms of the frequency and quantum of contact they had sought and some achieved more than they had applied for. There were only 35 cases where this was not so, in 15 of which there were compensatory elements (eg the parent did not get the frequency wanted but got the overall number of nights sought) which probably meant the overall package was not disadvantageous to them. Only in terms of enforcement (12 cases) did the dissatisfied applicants equal those who achieved what they wanted.

Most of the applicants who did not get everything they asked for reached agreement with the resident parent; only 10 cases went to a contested final hearing. Typically what the court was being asked to adjudicate on by this point was the detail of staying contact, not the principle.

The cases in which non-resident parents did not achieve everything they had sought in terms of the frequency of contact, the duration of stay and additional visiting were examined in detail to assess whether the outcome, however it was reached, might be considered 'unfair' to them. We concluded that there were possibly 10: five in terms

of the frequency of staying contact; seven with respect to duration, and two the refusal of midweek overnights.

Twelve of the cases which ended in staying contact were brought to give effect to existing court orders, of which five involved applications for penal notices and one an action for breach of the order. Ten succeeded to the extent that the original order was confirmed, but although one resident mother was fined for breach of the order, no penal notices were issued. In all six applications failed in whole or in part. There were only two cases in which we considered that the outcome was plainly unfair to the non-resident parent.

In 62 cases brought by the contact parent the non-resident parent had originally opposed either staying contact (17), unsupervised contact (15) or any contact at all (30). Almost all these cases (51) were resolved by consent, with only nine going to a contested final hearing, although in two, while not actively contested, the outcome was not agreed.

Most of these 62 cases (45; 73%) involved allegations or concerns about serious welfare issues and 32 (52%) more than one issue. Where contact was not already happening at the point proceedings started (48; 77%) the court typically adopted a cautious approach and it was fairly unusual for contact to resume on an unsupervised basis or without a welfare report. Of the exceptions there were possibly four where, in our opinion, this decision entailed a degree of risk.

Early finding of fact hearings were held in only four of the 24 cases involving allegations of domestic violence, although in two other cases findings were made in other hearings. Hearings were listed but cancelled in a further four. In most cases, however, there seemed to be intelligible reasons why a hearing was not held and there were only one or two cases where, in our opinion, the apparent lack of investigation of the 'facts' might have produced a risky outcome.

Cases in which other concerns were involved were typically dealt with by some kind of specialist input and although tests for drug and alcohol abuse, or psychiatric reports, were not common, there were only three cases where it seemed to us that the issues might not have been adequately investigated.

In most cases the courts and Cafcass officers seemed to adopt an encouraging and persuasive approach, albeit within an overall context of establishing and progressing contact. Resident parents who were suspected of not being sufficiently committed to contact, however, could find their behaviour subjected to criticism, even where their original concerns might be well-founded and in some instances the court was clearly prepared to take a 'robust' approach.

# Chapter 8: Unfinished cases

The four preceding chapters have looked in detail at completed cases and compared the contact which the court would have expected to take place as the result of the court proceedings with what the non-resident parent had asked for at the start of the case and the position of the respondent resident parent. There were, however, 10 cases which were still before the courts at the point our data collection had to cease. Since these were among the longest running and most difficult cases in the sample we considered they could not simply be discarded because we did not know how they ended. In this chapter, therefore, we first provide a profile of these cases and then examine their progress through the courts.

## Profile of on-going cases (10)

All the applications in this group were brought by non-resident fathers. Only one case had been in court before over contact although that application was withdrawn.

The children concerned were mostly very young, five being less than three years old at the start of the case, seven less than five and only one more than seven years old. In seven cases the parents had been previously married, the remaining three having cohabited. Intervals between the parental separation and the application ranged from less than six months (2) to over two years (2) although eight had been apart for no more than a year.

At the point the application was made none of the index children were having face to face contact although most (7) had had some contact since their parents split up. In five cases, however, the child had not seen their non-resident parent for more than six months. Six resident parents were opposing any face to face contact; three were prepared for there to be contact but wanted it to be supervised and in the remaining case the issue was the child's opposition to contact. In total five of the index children were said to be refusing contact at some point.

In all but one of these on-going cases the resident parent had raised serious welfare issues: domestic violence (8); child abuse or neglect (4); drug (2) or alcohol (3) abuse; mental health (2); learning difficulties (1) or fear of abduction (4). Seven cases involved more than one concern, the average being 2.4, with a maximum of four. The only case in which there were no serious welfare concerns concerned a child of nine who until recently had been under the impression that his stepfather was his father and was adamantly refusing to have contact with the father he had last seen when he was three.

Most of these cases started at county court level, although two were transferred up from the family proceedings court. One of these two cases was subsequently transferred to the high court, as were two of those which started in the county court.

On average, at the point our data collection ended, these cases had been continuously before the courts for 35 months, the shortest having started 29 months previously, the longest 43.
Cafcass reports were ordered in all these cases, of which five had more than one report. In one case there was a Social Services report and in two the children were separately represented. In seven there was other expert evidence. Six cases had

contested interim hearings including three finding of fact hearings. Two cases had family assistance orders, indeed one had several.

## What progress was being made in these cases?

All the applicants in these cases had been originally seeking face to face, unsupervised contact. Indeed six had sought staying contact. Our latest information indicates that there were only two cases in which face to face contact was actually taking place, both on a supervised basis, although in a further two supervised or observed contact had just been ordered and in a fifth case the parents had agreed staying contact. In four of the remaining cases the only contact was indirect while in the final one, although there had been intermittent contact in the child's home, with mother in attendance, contact had again broken down.

The most dramatic 'progress' was in the case in which the resident parent had agreed to staying contact (case 924, below). Given the history, however, it was by no means certain that this, or indeed any contact, would actually take place. This case was notable for the considerable efforts which went into getting contact going in the light of hostility from both the resident mother and the children, the determination of the court and practitioners not to give up, the extensive professional input, the tight control exercised by the court and the unexpected 'ending'. For this reason we describe it at length.

Case 924. There were two children in the case, the index child, a girl of 4 and her brother, aged 7. The parents had separated, very acrimoniously, 4 months previously. There had been some contact since separation, supervised by mother or maternal grandfather, but this stopped, mother claiming that the children were frightened of father and did not wish to see him. Father applied to court. Mother opposed any contact, citing a long list of examples in which father had been verbally abusive and threatening to her and the children pre and post separation and some incidents of physical ill-treatment. Father acknowledged that he had physically disciplined the children from time to time, that he had lost his temper on occasion and that mother had been bruised in one incident of 'play-fighting', but denied domestic violence.

At the first hearing (month 1) the parents agreed that contact would begin at a contact centre, with staggered arrival and departure times. Both parents gave undertakings to 'endeavour to make contact a positive experience' and not make derogatory comments about the other to the children. Father additionally promised to remain calm during contact.

Only one session took place and was terminated because of the older child's distress and anger. No further attempts were made pending the Cafcass report, 3 months later (month 4). This recommended that contact should be tried again in a more specialised (and distant) contact centre which could provide an assessment and an order was made in those terms. Father undertook to take an anger management course, the costs of both this, and the assessment to be met from his legal aid. Mother then made representations to the Legal Services Commission and father's funding was stopped. There were no vacancies on anger management courses for several months.
Contact at the contact centre never got beyond first base: after two preliminary meetings with the children at which the older child became extremely distressed, the staff decided the best strategy would be to start with indirect contact, father being

given help to do this, and how mother dealt with it with the children being observed. The court made the children parties (month 7) and appointed a guardian ad litem. Leave was given to appoint a child psychologist to undertake an assessment of the family, indirect contact to continue in the meantime.

The psychologist's assessment (13 months) was that the older child was emotionally disturbed and that both children probably felt affection for their father although they could not acknowledge this because of mother's attitude, but that to move to direct contact would be too traumatic at this stage; work was needed to help the parents resolve their hostility. The guardian concluded that there was a 'credibility gap' between father's past behaviour and extent of the children's resistance, that mother's negative views 'overflowed' onto the children and that it was 'hard to accept' that some of her actions were not deliberate. It would not be in the children's interests for father to withdraw his application. There should be a tightly controlled programme of work with both parents, with father undertaking an anger management course and mother working with a counsellor.

The court made a 3 month family assistance order and ordered observed contact (15 months since application). Father undertook his anger management course but no progress was made under the FAO because of mother's resistance. Observed contact initially went quite well with the index child and it was agreed this should continue (at a third contact centre). Her brother, however, remained resistant and it was agreed it would not be pursued (17 months).

The guardian's next report (22 months) was even more negative about mother:

> *It remains mother's intransigence to contact, negative views and anger at father since separation and her need to be in complete control that has led to this. Most movements towards contact have been painfully gained in court, only to be eroded by various strategies before the next hearing. Some progress seemed to be made with (the index child) but recent claims of illness place this in grave jeopardy. (The child's) stated wish to avoid contact does not fit with the progress witnessed but it is not surprising she does not feel able to live placed in the middle of this conflict any longer*.

Reluctantly '*and with a sense of being manipulated'* the guardian concluded that it was not in the children's interests to be exposed to this conflict. Of the options open to the court she did not consider that changing residence was feasible, while a penal notice would probably be counter-productive. She therefore suggested that indirect contact should continue but that the court might like to consider appointing an expert in 'implacable hostility'. The court ordered indirect contact and gave leave for such an expert to be instructed.

The expert's conclusions (27 months) were unequivocal: the children's professed animosity to father had no rational basis in their experience; the likely explanation was that the children experienced their love for father as a betrayal of mother. Unable to tolerate the distress this engendered they had become aligned with their mother, seeing her as wholly good, their father as wholly bad. Such *'alienation'* posed great risks to the children's future well-being. His recommendation was radical, either a change of residence or the immediate reintroduction of high levels of staying contact. It was important that the children were not given the impression that it was up to them to choose whether or not they saw father; it had to be made clear it had been ordered by the judge. This would help remove them from the decision-making role in the conflict and reduce the sense that they were committing an act of betrayal. Mother conceded and a consent order was made for staying contact

alternate weekends from Friday evening to Monday morning, maternal grandfather to facilitate the handover. The court listed the case for review in 3 months.

It is conceivable that the court's persistence and the expert's 'solution' may have cracked this long-running case. There were two other cases, in which observed or supervised contact had just been ordered, in which it seemed there might also be some movement in the direction of contact. However we could find only one case in which we could feel fairly confident that contact had been re-established and was progressing.

Case 1003. The child was only 6 weeks old when father applied to the court for a contact order and a prohibited steps order preventing mother removing the child from the jurisdiction. The parents had separated before the child was born and after initial contact mother refused any more, alleging father was violent to her during pregnancy and had shaken the child.

At the first hearing the court listed a finding of fact hearing. This was twice delayed because one or other of the parties was not ready to proceed and eventually took place 12 months after the initial application. None of mother's allegations were found proved. But since the child had not seen father since she was a small baby it was ordered, on the advice of Social Services, that contact should initially take place at a contact centre in the presence of maternal grandmother. This went well and maternal grandmother bowed out. Ten months later the parents agreed that some contact could take place away from the contact centre and at a subsequent review hearing (the last on record, 25 months after father's application) it was noted that contact was taking place every Saturday, once at the contact centre and once at other venues, but in mother's presence. A further review was listed for 9 months time.

In contrast six of the 10 cases seemed to be either stuck or even going backwards. One of these seemed likely to end soon in the most limited form of indirect contact.

Case 627. The child was 7. There had been no contact since the parents separated 3 years previously, father having withdrawn an earlier application. Mother was opposed to all contact on the grounds that she and the child had been subjected to abuse in the past; that contact would be distressing for him, and expose the family to risk of emotional/physical abuse and possible abduction. She argued that the child had achieved stability which should not be disrupted.

A finding of fact hearing, held 4 months into proceedings, found all mothers' allegations proved. Indeed the judge found the allegations to be to be '*under rather than overstated'*. Three months later, in line with a Cafcass report, the court ordered indirect contact by means of cards, letters and presents every 3 months, this to be facilitated by a contact agency. The contact case was listed for review in 12 months but the court remained actively involved because mother also applied for permission to dispense with father's consent to changing the child's name.

Although mother had opposed indirect contact she did cooperate for about 9 months and then ceased to do so and then disappeared with the child. Once traced a penal notice was issued to secure her attendance at court. The contact agency reported that prior to mother's withdrawal of co-operation indirect contact had gone well, the child had wanted to continue and was beginning to develop a relationship with his father. Mother apologised for her actions but said she had been concerned about the

child's behavioural problems which she attributed to the contact, and his threats to go and live with his father.

The court made the child a party and appointed a guardian, who reported that the child was quite clear that he wanted no further contact. She was confident that he had sufficient understanding to make that decision; it was vitally important that his views were listened to and taken seriously and argued that it was potentially damaging to force the child into even indirect contact against his will.

At the point the file data ended father was seeking supervised contact, while the guardian was recommending the only form of contact should be annual progress reports from mother, in order to keep the door open for future communication should the child wish.

The court, of course, may have decided not to act on this recommendation. In one of the most stuck cases a Cafcass officer had advised the court three times that the attempt to progress contact should be abandoned.

Case 420. The child was $3^{1/2}$. Her parents had been separated for about a year. Mother applied for a non-molestation order in respect of 2 alleged incidents of violence around the time of separation, which she said were witnessed by the child. This was resolved by father giving an undertaking (although he later denied any violence). The parents continued to live separately in the same house, until mother took the child and moved to live with her new partner a couple of hundred miles away. Father said mother then refused contact; mother's version was that father was offered contact but insisted on it being for 2 weeks in every month. She had also made it a condition of contact that father return the child's passport.

Father applied to the court for staying contact every other weekend. Mother said she was not opposed to visiting contact but since the child had not seen her father for several months this should be initially supervised. After some delay caused by a dispute as to which court should hear the case this was agreed. By the time the first contact centre visit was to have taken place the child had not seen her father for 10 months and was said to be frightened of him. Mother did not bring her for contact. Father applied for a penal notice. The court adjourned that application, it having been agreed that there should be 2 sessions of contact observed by Cafcass. These did not take place either, the officer being so concerned at the level of fear the child displayed when she was shown a photograph of father that she considered it was not in the child's interests for contact to go ahead. She recommended an assessment by a contact agency. The court ordered indirect contact. The case was now 9 months old.

The assessment report, filed 5 months later, concluded that the child was unlikely to be still traumatised by the memory of the events surrounding the parental separation and that while mother purported to be supporting contact her behaviour indicated otherwise. It recommended work should be undertaken with the parents with the aim of establishing direct contact within 6 months. The court made a family assistance order.

Little progress was made. The Cafcass officer recommended a further 3 months work but that if nothing had been achieved there should be an order for indirect contact. The court made another 6 month order, at the end of which the child was said to be still adamant she did not want to see her father and very distressed when this was mentioned. The Cafcass officer, who considered the reasons for this were

far more complex than parental alienation and not entirely the fault of mother and her partner, argued that ' *a line must be drawn under the court proceedings in the near future'.* After a contested interim hearing the court made another 6 month family assistance order, ordered 3 sessions of observed contact, to be followed by fortnightly contact for a period of 2 hours at a venue to be determined by Cafcass. The case had now been going for 2 years.

This appeared to get things moving and after 6 months of supervised contact the Cafcass officer persuaded mother to allow unsupervised contact. To no avail, mother did not comply, saying said the child was telling lots of people that she did not want contact, she was distressed, wetting and soiling herself and her school work was suffering.

Father again applied for a penal notice. The Cafcass officer again argued that the proceedings should be brought to an end - direct contact was only sustained with Cafcass involvement, it was a fragile situation which could not be sustained and had not enabled a positive relationship to be established between father and child. The court revoked the order for unsupervised contact but again ordered observed contact followed by contact at the contact centre. By this point proceedings had been underway for 40 months and the child was 6.

In the remaining cases, however, the Cafcass officer seems to have been just as reluctant as the court to admit defeat.

There were only two 'stuck' cases which did not involve a resistant child.

Case 622. The parents separated when the child was 2. Contact took place for about 3 months but then stopped, according to father because he had asked to rearrange one contact, according to mother because he had threatened her. Father went to court. Mother opposed any contact on the basis of father's drinking, threatening behaviour, violence and unreliability about contact. She also expressed concern that the restoration of contact would be stressful for the child (who regarded her stepfather as her father) and cause a recurrence of a physical condition which the GP considered could be stress-related. Father denied violence and said he no longer drank.

In the course of the first welfare report the parents agreed that contact should be arranged at a contact centre, preceded by father sending cards and a video of himself so mother could explain to the child who he was. Father did this but the contact centre sessions never started: father turned up once, mother did not; mother then turned up but father did not; the third time mother again did not attend. Father sought a penal notice but then agreed that contact should continue on an indirect basis for a while longer with a referral to a contact agency.

After some delay the contact agency started work. By this time indirect contact had dwindled, which mother saw as further evidence of father's lack of commitment. The agency considered that if father was able to sustain indirect contact then there could be a positive result despite mother's current opposition but that without it direct contact would be impossible and criticised father for not being able to see beyond his own wish for contact to the impact on the child. At the point the case ended it was not clear whether father would take up indirect contact again or whether, after three years, the court would bring the proceedings to an end or adopt a different approach.

As can be seen, the circumstances in these incomplete cases were quite varied. The common thread running through them all, however, was the effort made, by professionals and the court, to get contact going in the face of sustained opposition from resident parents and often children and the reluctance to admit that this goal might not be achievable.

## Summary

There were 10 cases in which proceedings were still continuing at the point data collection had to end, having been continuously before the courts for an average of 35 months. These cases were among the most difficult in the sample with high levels of professional input from Cafcass and other professionals with two children being separately represented and two families having family assistance orders. Most cases had contested interim hearings including three finding of fact hearings.

At the point the application was made none of the children were having face to face contact. Six resident parents were opposing any face to face contact; three wanted it to be supervised and in the remaining case the issue was the child's opposition to contact. In total five of the index children were said to be refusing contact at some point.

In 9 cases the resident parent had raised serious welfare issues: domestic violence (8); child abuse or neglect (4); drug (2) or alcohol (3) abuse; mental health (2); learning difficulties (1) or fear of abduction (4). The exception concerned a nine-year old who adamantly refused to see the man he had only recently discovered was his father, whom he had not seen for six years.

At the point the file data ended there were only two cases in which face to face contact was actually taking place, both on a supervised basis, although in a further two supervised or observed contact had just been ordered and in a fifth case the parents had agreed staying contact. In four of the remaining cases the only contact was indirect while in the final one, although there had been intermittent contact in the child's home, with mother in attendance, contact had again broken down.

There was only one case in which we felt confident that contact had been established and was progressing. In three there seemed to be some movement but in six the case seemed to be stuck. All but one of the stuck cases concerned children who were resistant to contact.

The circumstances in these incomplete cases were quite varied. The common thread running through them all was the effort made, by professionals and the court, to get contact going in the face of sustained opposition from resident parents and often children and the reluctance to admit that this goal might not be achievable.

# Chapter 9: The court process

In examining in earlier chapters the various outcomes of the court proceedings and how this related to what applicants were originally seeking we have covered a great deal of information about various aspects of the court process. In this chapter we first provide an overview of the process in all the sample cases and then look in more depth at a number of key themes and issues, drawing as appropriate on our three data sources, the case file data, transcripts and interviews.

## Overview of the court process in the sample cases

The majority of our cases (254; 83%) started in the sample courts. All but three of those in the family proceedings courts did so, but 51 (22%) of cases in the county courts transferred in, mainly from other county courts, although 18 were transferred up from a family proceedings court. Twenty-four cases had at least one hearing before a high court judge.

Ten of the sample cases were still continuing at the end of our data collection period, having been before the courts for between 29 and 42 months. All these cases were in the higher courts, the proportions ranging from 3% to 12%, with only one court having no unfinished cases[31].

A further six cases were truncated because either one of the parents died or the parents were reconciled.

Of the remaining 292 cases, which might be regarded as having run the full course, some completed quite quickly. Thirty-two cases were disposed of at the first directions hearing and in a further 11 full agreements reached at that hearing were tested out and confirmed at the next. In most of the remainder, however, the process made many more demands on court time, taking, on average, between four and five more hearings. Across the whole sample of completed cases the average number of hearing was five hearings. However the range was wide, from one to 22. A third took more than five hearings and nine per cent (26) more than 10.

In terms of duration the mean was 10.8 months. Only 15% took no more than three months from the point the application was made, and less than two-fifths (37%) were over within six months (table 9.1). Over a third (35%) took more than a year and 6% more than two. As can be seen from table 9.1, in general cases completed more quickly if they were heard throughout in the family proceedings court (just under 9 months), the average for those completing in the county court being 11 months and in the high court almost 16. (It should also be remembered that all the incomplete cases were in the higher courts). However there was also quite a lot of variation between the different courts (the means in the family proceedings court ranging from 5.7 to 11.3 months; and in the higher courts from 8.5 months to 16.8) (Appendix tables 9a and b).

[31] This is not simply a reflection of the stage in the research at which we collected the data since we went back to all our courts in the closing stages in an effort to maximise the number of completed cases.

**Table 9.1: Case duration by level of court at which case ended**

| | Level of court at which case ended | | | | | | All cases | |
|---|---|---|---|---|---|---|---|---|
| Months | FPC | | County | | High | | | |
| | No. | % | No. | % | No. | % | No. | % |
| Up to 3 | 13 | 18 | 30 | 15 | 1 | 6 | 44 | 15 |
| 4-6 | 17 | 24 | 44 | 22 | 2 | 11 | 63 | 22 |
| 7-12 | 24 | 33 | 58 | 29 | 2 | 11 | 84 | 29 |
| 13-18 | 14 | 19 | 33 | 16 | 6 | 33 | 53 | 18 |
| 19-24 | 4 | 6 | 23 | 11 | 4 | 22 | 31 | 11 |
| More than 24 | 0 | 0 | 14 | 7 | 3 | 17 | 17 | 6 |
| | | | | | | | | |
| *Minimum* | *1* | | *1* | | *3* | | *1* | |
| *Maximum* | *23* | | *48* | | *32* | | *48* | |
| *Mean* | *8.8* | | *11.3* | | *15.9* | | *11.0* | |
| (N=) | (72) | | (202) | | (18) | | (292) | |

Two-thirds of the cases (200 of 308) had some professional evidence. This was typically in the form of welfare report (196, 64% of all cases), usually from Cafcass (183; 59%); the rest from Social Services. In one further case the court made use of a Cafcass report prepared recently in another case which concerned the non-resident parent. Eighty-nine cases had more than one welfare report.

There were only 11 cases in which the children were separately represented. Typically this was ordered after the case had been before the court for a considerable period of time (average 11 months) although in two cases it was done within six months. In five cases it took between eight to 11 months and in four over a year, with one going for 26 months.

Evidence from other professional sources was fairly unusual (77 of 308; 25%) and was typically found in cases in which welfare reports had been ordered (66). Most of this evidence came from health or mental health professionals, predominantly psychologists (21 cases); GP's (19), psychiatrists (17) or paediatricians (8) with a few cases having evidence from associated groups such as drug and alcohol support teams, mental health nurses, social workers, counsellors and therapists. Fifteen cases involved hair tests for illegal drug use, four liver function tests for alcohol abuse and two reports from drug and alcohol teams. Ten cases had police evidence and two reports from experts in sexual offending.

Very few cases (32 of 292; 11%) went to a contested final hearing and of those which did at least 11 settled in the course of the hearing. Contested interim hearings were more common (68 cases) but less than a third (86; 30% of 292) had a contested hearing *at any stage*. Even in cases where non-resident parents did not achieve their objectives in terms of contact or enforcement only 21 (15% of 136) went to a contested final hearing and only 48 (35%) had any contested hearings. Similarly, where the resident parent had initially opposed either any contact, unsupervised contact or staying contact only 20 (12% of 165) had a contested final hearing; 53 (32%) a contested interim and 63 (38%), either.

Twenty-four cases had a finding of fact hearing on domestic violence listed, of which 12 took place. In nine of these the allegations were upheld wholly (5) or in part (4); there being only one where they were rejected. In one of the remaining cases the perpetrator conceded most of the allegations in the course of the hearing and in the

final one, in which there was a hearing but no oral evidence was heard, it was reported that the parties had agreed they had a 'volatile relationship'.

## The search for settlement

> *There are a handful of really difficult cases. I should think 90% of the stuff that comes to court is sorted out anyway. The number of cases that are actually fought is very small indeed. Very rare. I do loads of family cases but I would say that this year I have only given two substantive judgements.* (Judge)

> *It's a pyramid, you start off with all these, only a few go to final hearing, thank goodness, and somewhere along there things are settled.* (Judge)

The relative rarity of contested hearings, particularly contested final hearings, has been a key theme in this report. The interview material confirmed that this was a fair reflection of practice, with judges, magistrates, Cafcass officers and lawyers all reporting a strong preference in the sample courts for resolving cases by agreement rather than adjudication:

> *We don't impose solutions on people unless we absolutely have to and I don't like doing that. I consider that if we get to a full hearing the court's failed.* (Judge)

> *What we want is agreement, for the parents to agree.* (Magistrate)

> *The court's approach is to find some sort of compromise position.* (Cafcass officer)

> *The whole philosophy of the system is to try to help parents reach agreement. It's only as a last resort that a judge will shout at a parent and say this will happen, it's my decision. And that can be nine months or a year after the thing has started.* (Solicitor)

Agreed arrangements for contact were considered to be more acceptable to parents, more likely to meet the child's needs and more likely to work than those imposed by the court, while a contested hearing would in addition be counterproductive, exacerbating and entrenching conflict and making it even more difficult for the parents to work together afterwards:

> *The reason we push settlements is that it's most likely to work if they agree it.* (Judge)

> *I think our philosophy is always going to be that something which is agreed has a much higher chance of actually working and being what's in the best interests of the child than something which we are going to impose because whatever order we impose nine times out of 10 there's going to be a disappointed party.* (Magistrate).

> *In the majority of cases final hearings can be very very damaging, because it really does polarise everybody. And if one parent has a very hard time in the witness box being cross-examined by counsel who is instructed by the other parent, they don't see it as counsel cross-examining them, they see it as the*

> *other parent. How are they going to be able to work together after that?* (Solicitor)

A few practitioners did express some reservations about the focus on settlement, arguing that some cases needed to be heard. This could be because some people simply could not bring themselves to agree but needed the court to make the decision, or they needed the issues to be aired and determined, or because settlement meant a compromise which was not necessarily the right solution:

> *There is an implicit assumption that hearings are not good for people because they throw things at each other and it makes the situation worse whereas in fact some cases need to be heard.* (Cafcass officer)

> *I think sometimes parents do need their day in court and this is very much against the court's views, normally. There are some occasions when a parent will actually not want to make a decision themselves and want it made by the court.* (Solicitor)

> *It's as if we've got two countries saying I'll give you a bit of Poland if you give me a bit of Herzogovania and we'll all settle it, never mind if it's best for the country or best for the child, and it seems, yes there is a large element of finding a compromise but that's slightly different from reaching a decision that's in the best interests of the child.* (Cafcass officer)

One solicitor gave us an example of a case where he felt the court's customary settlement-seeking approach had not worked:

> *The case had been going on for nine years. The parents were pathologically distrustful of each other, both convinced the children were at risk of harm in the care of the other. Mother had a new boyfriend, father and he would circle round each other like a couple of bulldogs, periodically one would clock the other and there'd be criminal proceedings. They'd break into each other's houses. Every time there was a bruise on a child they'd be roaring off to social services and alleging this and alleging that. Every time a court hearing came, the judge would send them out to talk to the Cafcass officer who would assist them in cobbling together some agreement which would hold for maybe a fortnight. What it actually needed was a hearing. Full bells and whistles. Evidence, cross-examination, witnesses, several days, probably a week. But it would have given them closure. Sometimes the court doesn't always see that what people need for closure is the bloodletting. My guess would be that if you looked at the resources that had been expended on that lot over the years the hearing might have been a better use of resources.*

On the whole, however, it appears that all those working in the courts share the same value base, that wherever possible an agreed solution is likely to be better than one reached through adjudication. As one solicitor put it: '*no-one in the system wants a contested hearing*':

> *It just makes it so much easier for the child. We feel that if they've agreed, or there's a partial agreement, that the order will work better rather than if an order was put in to place that one really didn't want, that it's more likely to break down, and then it would be back in court again. So the more agreeable parties are, the more contact will go smoothly for the child.* (Cafcass officer)

> *Very few of my cases go to a fully fought contest because I don't think it's in the parties' interests for that to happen. So I always do try to find a resolution. It's maybe not as much as the non-resident parent might want but it's maybe more than the resident parent would want to give. Because them standing up in court and having an argument about it doesn't resolve the situation.* (Solicitor)

> *That's got to be right, if you can, because contact is only going to work for the benefit of the child in the long run if parents can retain some sort of mutual respect and co-operation.* (Solicitor)

Similarly it was also evident that each practitioner group was seen as playing a part in working towards this goal, reinforcing the efforts of the others:

> *I think there is a high input on getting agreement. You've got Cafcass, you've got the lawyers, they really do try and sort it.* (Judge)

> *It's through the efforts of Cafcass, the court, the procedure itself and good legal advice.* (Solicitor)

> *I suppose it's a combination of good advice from both representatives, very firm direction from the court and also from the Cafcass officer. What you tend to find is that if you get a good Cafcass officer you can squeeze it together.* (Solicitor)

Thus judges spoke of talking to parents early in the case about the importance of trying to reach an agreed solution:

> *I always say to parents 'you're the parents, it's far better that you agree what should happen, rather than the court imposing on you something that neither of you might want and that we think is best for the child. You're the parents, you ought to deal with what's best for your child.*

> *You tell them it can either be over the desk in court and they can shout and scream and run up huge bills, and if they're on legal aid it's going to come out of their pot at the end of the day. We all have our own standard phrases we use in the beginning. I say every child has the right to grow up in a loving caring relationship. And if they put that in the forefront of their mind they are much more likely to reach a workable solution than somebody like me, who has never met their child, and foist on them an order that they might find uncomfortable. That's not the solution. The real solution lies between the two parents and they've got to reach this compromise. That's how I start off. I start off about the responsibilities of the parents, not about their rights*

There was also evidence of this in the hearing transcripts. As one judge succinctly put it to parents: '*agreement is the name of the game'.* Or more expansively:

> *It really amounts to this. There is no right answer and there is no wrong answer but there is a wrong thing to do here, which is to prolong the agony for these children. And so whether it's six hours or four hours or whether to start with it's one night or two nights is far less important for the children than beginning a process of co-operation and agreement about these things because otherwise it has a potential for never ending and we all suddenly wake up one day and the children's childhoods are gone and we spent the whole of it arguing in court. So it's not exactly right to say, but it's almost right*

> *to say, that virtually any measure of agreement and co-operation between you, even though it may seem something small now, is a better outcome than you having an outcome in court and me imposing something on you which one side or all sides sometimes are unhappy with.*

Most solicitors were seen to reinforce this message:

> *Parents do get pressure on them, don't they, when we've done the bit of a talk about all we're here for is what's best for the child. And certainly the family law solicitors we have here are pretty good at picking up on what we say, it's best that you sort it out than you get something that you don't want*. (Magistrate).

> *To give the lawyers great credit, they really do try to get the parties to agree, and they are very often successful. One can't overestimate the efforts they put in to get the parties to reach agreement.* (Judge)

> *I think we probably have more solicitors now who are working towards agreement, advising clients to settle.* (Cafcass officer)

Hence the settlement seeking process can be impeded if a solicitor is of a more litigious bent, or one or both parents are not legally represented:

> *(When cases settle) it's usually because the solicitors have managed to get the clients to see sense. I think that the courts would find that if it hadn't been for the legal advisors who sit out there and try and knock some sense into their clients that they would have more contested hearings and they would have cases that would just go on and on and on for years.* (Solicitor)

> *I think to a certain extent it depends on the quality of the representation. There are certain legal advisors who will adopt a conciliatory approach and try to negotiate properly with each other. And there are a small group who adopt a very adversarial, very hostile approach and those are the cases that we really have to take by the scruff of the neck.* (Judge)

> *The courts operate within certain parameters. They look at a case and you will generally get an idea, as will a solicitor, of what direction this is heading in. Without the solicitor to offer that guidance, and to give a bit of leverage, either on the day of the hearing or in the run up to it, you will get people saying 'no, I'm not going with this' far more readily.* (Cafcass officer)

Cafcass was seen to play a crucial role, in helping to get things started - and sometimes even resolved – through in-court conciliation, in their work in the course of preparing the welfare report, and in the impact that that report has on the parties. We look at these stages in more detail below.

## Settlement points

The court process offers many settlement opportunities, starting from the very first court appearance. (Indeed some cases may settle even before the parents enter the court building). Of the 216 completed sample cases which ended with a consent order or agreement 42 were effectively resolved at or by the first directions hearing. While often there was no information on file about how that settlement had been reached, since all our sample courts had some form of in-court conciliation scheme

involving Cafcass it seems highly likely that this was at least part of the explanation, an assumption supported by the interview material:

> *Quite a lot of these cases are actually settled at the first directions appointment, with the assistance of the Cafcass officer but backed up by the respective solicitors providing appropriate advice and guidance.* (Solicitor)

> *You can literally go to court, meet a couple for the first time ever, and establish a set of safe contact arrangements in an hour. And that's your only ever intervention because once it's got started it will develop its own momentum.* (Cafcass officer)

> *A percentage are agreed actually at the first hearing. Cafcass play a really important, vital role in fostering agreement and quite often agreement can be reached through the Cafcass duty officer.* (Legal advisor to the magistrates).

Where cases have not resolved, or appear to be on their way to resolution, at the first hearing, the court will very often order a welfare report (70%; 121 of the 174 sample cases ending in agreement which had not resolved at the first hearing). Of these 25 (17%) settled in the course of that report being prepared. While this seems quite a substantial proportion, some of the Cafcass officers we spoke to commented that it occurred less frequently now than in the past because the ones which were easier to shift had been filtered out by the processes of pre-court mediation and/or in-court conciliation:

> *I think we all recognise they're becoming more difficult. We used to have straightforward ones, where you would think I'll move these ones on. They all seem difficult now, stuck.*

> *There are no easy cases now. I can't think of the last one I had where it resolved in the course of the welfare report. There are a number of hoops people go through so by the time they come to us they are quite entrenched.*

Filing the welfare report offers a further spur to settlement:

> *It's sometimes when people can see, this sounds really unkind – what idiots they're making of themselves, that they think, oh, perhaps we'll do it differently, or it's the first time anyone has told them to shut up and listen to the child within this context.* (Cafcass officer)

> *A significant proportion of the cases listed for final directions post the Cafcass report vacate the final hearing because it's agreed. It's a reality check. So people start to negotiate sensibly.* (Solicitor)

> *Sometimes we will order a Cafcass report, which takes three months here. When that report comes back we will see it again. I would say 75% at that stage don't require a final hearing.* (Judge)

This was not necessarily just because the report itself could be an '*eye-opener for parents*' but because, since solicitors know that the report will be highly influential in the court's approach to the case, it provides a lever for solicitors to use on their clients:

> *There is often a compromise after Cafcass has reported. We advise the client: 'Cafcass have recommended this for these reasons'. Providing we think they're sound reasons and ones the court will accept we advise the*

> *client that we think it is quite likely that the court will make that order, you are still able to press ahead and seek more contact but we can't predict whether that particular judge will go with you.* (Solicitor).

> *You use the Cafcass report to say to an unreasonable client, this is what the Cafcass officer recommends; the court are going to go with this, let's be reasonable about it.* (Solicitor)

Solicitors, however, also pointed out the impact of public funding requirements:

> *If a Cafcass officer is making recommendations, then there is obviously the issue of whether if you are publicly funded you are going to be able to extend your funding to cover a final hearing because of course most certificates will have the limitation barring you from involvement in a final hearing unless you have a favourable report or you can explain why. And it may be that the recommendation is something that can't be challenged.* (Solicitor)

Privately funded clients may also compromise at this point, being advised that they are unlikely to achieve what they wanted. Parents who are not legally represented, however, and who are therefore unaffected by either legal advice or the funding constraints, may press on regardless. As one Cafcass officer put it:

> *It's then when it's very important that they're represented because then they can hear from someone else yes, that is a reasonable report and that will be read and listened to by the judge. Whereas if you're in person you can just write if off as 'that idiot'.*

Twenty-six of our consent cases (21% of the 121 with a welfare report) resolved after the filing of a single welfare report. In 54 of the remaining cases additional reports were ordered. Of these 12 settled in the course of the report preparation and 25 after the report had been filed. In all, then, 37 cases settled during the preparation of either a single or subsequent welfare report and 51 after a report had been filed.

In 11 of our cases, however, settlement was only achieved on the day of the final hearing. Even at this late stage there is, as one solicitor put it '*a huge drive to reach an agreement*'. Lawyers and sometimes Cafcass officers are likely to be involved in intensive negotiations. Parents, who are now brought up against the reality that they will have to face giving evidence and be cross-examined and may end up with a result they do not want, may be more receptive to the idea of compromise. Moreover, even if parents have proved immune to their solicitors' efforts to get them to settle they may respond differently to the advice of their barrister:

> *When it comes to court, and that's the big advantage of counsel, counsel will say look, that's what the judge is going to do, I'm telling you now and of course it's a complete stranger who is telling you to get it sorted. They are away from the process and that's the big advantage; solicitors and clients can get too close together on these contact things because they go on for ages.* (Cafcass officer)

> *You get everybody to court, heads will be banged together, you bring a barrister in who starts saying let's have a look at it, second opinion and we'll probably settle. There will be some head-banging in the corridor and people realise, oh, I'm going to have to give evidence, and my barrister is saying... That's exactly what I'm going to do with this guy I told you about* (who is, in the solicitor's view, being unreasonable) *because we have got to the point*

> *where I will shout at him and he will shout back, I will tell him he's wrong and he will tell me I'm wrong, but to bring in a stranger who is a barrister, suddenly it's 'I don't know you. I need to be listening to what you're saying'.* (Solicitor).

Finally, of course, there are some cases which only settle at the very last minute, in the course of the final hearing. This applied to at least eight of our sample cases. Even within the courtroom settlement may still be held out as the most desirable outcome, as evidenced by this quote from the judge at a final hearing, sending the parties out to negotiate:

> *Today is the last stop in this particular case. Either way it's going to be resolved today but as ever it's virtually always the case that something manufactured, devised, arranged between the parties themselves is better. It's got your lifeblood in it, not mine. It is better to face up to these things and make some sort of arrangement. I'll make a decision if you want me to, after I've exhausted with you the possibility of drawing you to a decision because if it's the easiest thing, I just make a decision. I mean, if you want me to, I can do that but then you have to live with it afterwards. But, more importantly, the boys have to live with it and that's why I keep going back to this point of the easiest thing is for me just to make a decision and that's an end to it but it's better qualitatively for them if it comes out of some consensus.*

The tipping point is likely to be either the legal representative's estimation of the way the hearing is going, or even the judge/magistrates giving an indication of how they are thinking:

> *Some of them give you an indication, they've read the papers and they will give an indication right from the word go of what they are likely to do, on the basis that they haven't heard the evidence but if the evidence pans out as it is on paper... That can be quite useful as well. Some of them will, some of them won't. If you've got a client who doesn't see reason, and you can say 'well the judge has given us an indication that this is what he or she is thinking', then you can give then an idea of which way it is likely to be going.* (Solicitor)

> *Where we were talking before about spending time in the retiring room, those are the sort of issues where it's good, if the court gives an indication to them what we're expecting, and then says, right, we're going to give you an hour, or half an hour, go and sort it out amongst yourselves and we expect you to come back with an agreed order. It is really useful to focus their minds, to say, if you can't sort it out yourselves we're going to have to, and it's surprising how often they will sort it out.* (Magistrate).

## How genuine are the settlements reached?

The interview responses on this issue indicated a wide spectrum of scenarios. At one end, it was suggested that there were a few cases where the views of one parent, or even both, have shifted and matters had genuinely become less conflictual:

> *Sometimes time heals all this stuff and you come out of it with parents who were adversarial but they've perhaps got new partners and it's calmed down a lot and everyone's happy*. (Judge)

> *Just occasionally they get to the stage when they can get on with one-another again. The cases the court sees are usually those cases where the parents cannot communicate. They get to the stage where they are prepared to have a relationship at just this level of arranging contact, perhaps passing a diary backwards and forwards, that sort of thing, They still loathe one another but they're able to do it to that extent.* (Judge)

> *I think there are cases where their concerns, worries and aggravations subside and they manage to live alongside one another with arrangements which they think are fine.* (Solicitor)

At the other end of the spectrum are those where parents may have felt pressurised into agreement:

> *I think we have an number of cases where a mother will come back to court and say, there's been a consent order, she's not abided by it and she's come back and say she was forced into agreeing it, whether it's by her lawyers, or she feels she was forced by the court to agree. Yes, that does happen.* (Judge)

> *A judge might give a view, give an indication, make you go outside, have a chat, and on the back of a conciliation appointment there's even more pressure on everybody to agree.* (Solicitor)

> *A lot of parties feel intimidated. I acted for one woman. Father wanted shared residence. When it started, because of finances, she tried to do it herself. She went to court and, I wouldn't use the word 'forced' but she felt she had to go along with it. So by the time she comes to me she's crying her eyes out 'I have agreed in mediation'. He's very forceful and controlling, she's very weak and intimidated.* (Solicitor)

Most cases probably fall somewhere between these two extremes, the parties agreeing to '*something they can both stomach'*; even though '*neither party might want the actual agreement'* and *'no-one is completely happy with it'.* Solicitors, with whom we discussed this issue more thoroughly than the other practitioner groups, varied enormously in their estimates of the proportion of cases in which there was genuine agreement, from 'a *very high percentage'* to '*not many*'. The weight of opinion, however, seemed to be that consent orders and agreements reflected a more or less reluctant acceptance by the parties that this was the nearest they were going to get to what they had originally wanted and was probably a realistic solution in their circumstances.

> *There's probably an element of compromise in every single one of them. Because it's unlikely that either is going to have given the other exactly what they want, isn't it. They probably accept what both parties feel they can live with. I think settlement is generally what you can possibly bear to live with in everybody's best interests. You just have to balance it.*

> *I think they generally reflect an agreement which has been reached, albeit on one or other side, with reluctance.*

**Does the settlement process favour one party over the other?**

In this process both parties are likely to have to give some ground:

> *I think what you try to do is to split the difference. You try to get them to meet in the middle in the sense that something is given and something is taken.* (Solicitor).

However the extent to which each party does this is likely to vary and each may feel they have lost out:

> *What I always say to resident parents, and I think it is very hard for them to realise, because they say (the non-resident parent) always wants more, they need to realise that they're the only person who can give. I always try to tell them that, that although you feel you're being picked on because the non-resident parent is saying I want another hour, why are they not content, why can't they just take this, why I am the one always having to give? Well you're the one having to give because you're the one with the child. And I think they don't always understand that.* (Solicitor)

> *The non-resident parent may feel that they are not getting the level of contact that they might have originally hoped for. I think often it's them who feel that they are compromising more.* (Solicitor)

As to whether the process actually does tend to favour one party over the other, some of the solicitors to whom we posed this question thought that it might do so, operating to the advantage of the resident parent because they were inherently in a more powerful position:

> *It probably does favour the resident parent. Because it's the resident parent who is giving and offering a certain level of contact where you settle and you negotiate and it's generally the non-resident parent who's having to grab anything that's on offer, because he or she knows that there's no time to hear a final hearing today, so it's only going to get adjourned for another three months so why don't we say 'yes' to what they are offering today? I can just hear people saying it now.*

> *I suppose it does to some degree. I suppose there is a bias towards mum because effectively you have to do as mum says to be able to get something at the end of the day. She has the power because she has possession of the child*.

On the whole, however, the view seemed to be that the process was even-handed, operating equally, though in different ways, on each party:

> *It probably bites equally on both because if you're acting for a resident parent who is opposed to contact or to the level of contact once you've got the Cafcass recommendations and they're sound there is pressure on them to agree because you would be struggling to think of arguments you could put to persuade the judge that the Cafcass recommendation isn't suitable. So the resident parent is under pressure to settle. Non-resident parents too. If the Cafcass recommendation is sound you have to say I think it's unlikely the judge will offer you more.*

> *No. In an attempt to achieve settlement the court can and does put pressure on both parties. Pressure may be put on a resident parent to agree something that isn't exactly what they want in order to settle it and pressure may be put on a non-resident parent to accept less than they want in order to settle it.*

> *It tends to be mother says this, father says this, we'll go for the middle ground, which keeps both parents happy. That tends to be a theme in the way the courts tend to play these cases. If father got everything he wanted mother's going to walk out with nothing so the resentment will be there and vice versa, if father's left with nothing he's going to be completely disillusioned and might well just throw the towel in and say what's the point of doing this any longer.*

Some also pointed out that although the non-resident parent might 'lose out' in terms of the amount of contact obtained, since they had often started off without any contact at all, while they might have lost the final 'battle' they had essentially 'won the war':

> *I want to say it would favour the resident parent and maybe it does to a certain extent but equally if it has achieved the aim, which is having contact, then it isn't. The favouritism then is in the amount and again it's very often having to say, if you're acting for the non-resident parent 'the aim was to get contact…We've got that contact for you. It might not be what you want it to be at this stage but you've achieved that*'.

Our court file data would tend to support this assessment. Of the 198 applications by non-resident parents which ended in a consent order or agreement there were 73 (43%) in which it was clear that they did not achieve everything they had originally sought. However there were only 36 (18% of 198) in which the applicant did not achieve the *type* of contact sought ie, they got indirect contact rather than direct (11); supervised rather than unsupervised (4) or visiting rather than staying (21). In comparison, in 111 of 198 cases the resident parent had initially opposed either direct, unsupervised or staying contact, 86 of whom were unsuccessful (77%). That does not necessarily mean, of course, that at the end of the day they were unhappy with what they had had to concede. But it is an indication of how far many cases moved in the course of proceedings.

## The incremental approach

One of the reasons for this movement is likely to be the incremental approach favoured by the court. As reported in chapter 3, in the majority of cases in the sample direct contact was not taking place at the point the contact application was made. This applied to 133 of the cases ending in consent orders or agreements, all but 12 of which ended in face to face contact. Indeed most (64) ended in staying contact (which works out at 52% of the 124 consent cases in which the precise outcome was known), with 41 getting unsupervised visiting contact.

This movement was typically achieved through a staged approach. As a district judge explained to the parents at the first hearing in one of the sample cases:

> *Stage one, stating the obvious where there has been no contact, if there is any chance in any shape or form of moving contact from no contact to some other contact. By some other contact, one can include things such as just correspondence, what we call indirect contact, which is an extremely limited use, I suppose. The next stage is some form of what I will call supervised contact, which is a very softly-softly approach, going across the thin ice of the lake, if I can put it like that. Very often if there is to be supervised contact, it is*

> *to see whether that gentle pace forward is appropriate or not. So often there's a lot to be achieved and more quickly in the long term by taking it easy in the short term.*

The prevalence of, and the preference for, the incremental approach also emerged in the interviews:

> *The reason that there are very few final hearings is that in most cases it's a question of going one step at a time. And if the parents are prepared to do that, and I mean both parents, it usually gets somewhere and ends up with substantial contact. Mother sometimes play ball and sometimes father won't. If father is reluctant to do so I make it clear to him that he risks losing all. And usually they will accept that. And even if it comes to a final hearing, if an incremental approach is necessary that's what they get. And if necessary I bring it back for a review after six months or whatever.* (Judge)

> *Interim contact orders are very well used to try and build up contact but keeping the court as the overseeing authority, to keep reviewing. A step at a time. Often contact cases can run on for years.* (Legal advisor to the magistrates)

> *Very often everyone knows they're going to go up the ladder, it's dad wants to go three steps and mum perhaps up one and down two. And half the time, as I did earlier on today, I'm saying look if you build up the base up one step at a time over the next couple of months then we can jump all those other steps and you'll find it will work better.* (Judge)

The use of indirect contact as a first step was actually quite rare in these consent cases, there being only nine examples among the 120 which ended with face to face contact in which there was some direct contact during proceedings. At least three of these cases which started off from such a low base actually ended up with staying contact and none had any conditions of supervision[32]. Supervised or observed contact, however, was much more common (58 cases). Only six did not move beyond this, while at least 25 ended in staying contact[33].

Once face to face contact was established it might, or might not, progress smoothly. However even when there were no 'hiccups' the process was rarely swift, on average taking three further hearings and seven months to case completion, cases being managed through a series of reviews:

> *It's not sufficient to give them a little bit of paper and say this is what you do. We try to retain control over it here, and often we have brokered some kind of agreement and we'll call it back and keep an eye on it, and say we'll have it back in 10 weeks time and if it's working well there's no need for you to come back at all. But we want to keep an eye on it just to make sure.* (Judge)

> *It's a nibbling away, really, trying to build up the confidence between them.* (Judge)

The incremental approach, however, is only one of the reasons why some contact cases take so long.

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[32] In one case the type of contact was not specified.
[33] In 3 cases the precise outcome was not known.

## Delay

The avoidance of delay in dealing with children cases is a key principle of the Children Act 1989, section 1(2) stating that:

> In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

Research into the extent to which the Act has been effective in minimising delay in public law proceedings continues to come up with fairly depressing conclusions (compare, for example, Hunt et al, 1999 and Masson et al, 2008), despite various enquiries and strategies designed to address the problem (Booth, 1996; Finch, 2004; Judicial Review Team, 2005; LCD, 2002; President of the Family Division, 2003). There appears to have been less interest in delay in private law proceedings. However, this study indicates that it is no less an issue. As noted at the beginning of this chapter few of our sample cases were resolved quickly. The average duration was almost 11 months. Over a third of completed cases (35%) took more than a year and 6% more than two, the longest case having been continuously before the courts for four years. Moreover, as reported in chapter 8, the average duration of cases which had not completed was 35 months, the shortest having started 29 months previously, the longest 43.

The fact that proceedings take a long time, of course, does not necessarily mean that there has been prejudicial delay: 'purposeful delay' ie that which is designed to produce a good outcome for the child, may be more in the child's interests than a speedy conclusion. Certainly in contact cases, on the evidence of this study, there is a clear view in the courts and Cafcass that taking an incremental approach is more likely to be successful than forcing the pace. Some of the longest cases in the study were those where the resident parent had been initially opposed to any contact but the outcome of the proceedings was that this was expected to take place. Over half these cases (30 of 56; 54%) took more than 12 months.

Not does it mean that 'delay' is necessarily avoidable. Where the resident parent raises concerns about the safety of the child with the non-resident parent then those concerns have to be investigated. Fifty-eight per cent of such cases (76 of 154) took more than 12 months.

Indeed, as table 9.2 shows, there was a statistically significant association between the duration of the sample proceedings and all the main factors which would be expected to make a speedy resolution more difficult.

**Table 9.2: Factors associated with longer cases**

| | 1-6 months | 7-12 months | 1-2 years | >2 years | Mean (months) | |
|---|---|---|---|---|---|---|
| | % | % | % | % | | (N=) |
| *Initial position of the resident parent* | | | | | | |
| Opposed to any contact | 19 | 32 | 38 | 12 | 14.5 | (101) |
| Opposed unsupervised | 18 | 35 | 43 | 5 | 13.4 | (40) |
| Opposed staying | 39 | 29 | 26 | 7 | 11.0 | (31) |
| None of these | 58 | 24 | 18 | <1 | 7.2 | (120) |
| | | | | | | |
| *The child's position** | | | | | | |
| Opposed to contact | 24 | 28 | 37 | 11 | 13.9 | (71) |
| Not opposed to contact | 41 | 29 | 26 | 4 | 9.9 | (220) |
| | | | | | | |
| *Contact at application* | | | | | | |
| Yes | 56 | 21 | 20 | 2 | 7.8 | (89) |
| No | 27 | 33 | 33 | 8 | 12.4 | (197) |
| | | | | | | |
| *Serious welfare issue* | | | | | | |
| Yes | 21 | 30 | 40 | 10 | 13.9 | (154) |
| No | 54 | 28 | 17 | 1 | 7.7 | (138) |
| | | | | | | |
| *Welfare report ordered* | | | | | | |
| Yes | 18 | 32 | 41 | 9 | 13.9 | (184) |
| No | 69 | 23 | 7 | 1 | 5.6 | (108) |
| *More than one report* | *6* | *19* | *63* | *12* | *18.1* | *(84)* |

* Excludes one case where the child was only resisting staying contact, which lasted for 35 months.

It was beyond the scope of this study to explore why some proceedings took such a long time and the respective contributions of 'constructive' delay and delay which resulted from other causes. Hence we did not systematically record data on this. However it was very clear that the court process frequently did not proceed as expeditiously as either parents or professionals would have liked and that this was often not for positive reasons. It was notable, for instance, that although we did not specifically ask our interviewees about delay, of the 27 solicitors interviewed 17 raised it as an issue:

> *The one problem which has never been addressed is delay. It is one of the fundamental principles of the Children Act and yet here we are, 16 years on, and in my opinion it's still a problem.*
>
> *There's too much delay. Everything happens too slowly.*
>
> *The system is not quick enough. It needs to get on far quicker.*

The length of time Cafcass was taking to produce a welfare report or even to allocate the case was a common theme. Indeed in one of the sample cases a Cafcass officer explicitly referred to these difficulties in arguing, at the first directions hearing, for an early interim hearing on the issue of supervised contact, which she clearly did not think was warranted, rather than accepting, as the judge said he was inclined to do, mother's proposals for contact at a contact centre and waiting for the welfare report.

> *The practical position is that Cafcass take a ridiculously long time to produce reports. If a report was available in four weeks, I would agree with you. Where the report is available in 16 weeks, it is not appropriate and I would probably support the application for interim contact. I realise it puts the court in a very difficult position, but it just is not appropriate to let a case such as this go on without the court considering it for 16 weeks or more.*

Frustration about this also emerged in our interview data. Consider these comments in an interview with magistrates and the legal advisor responsible for family cases:

> Magistrate 1: *Quite often that's where a delay occurs. The Cafcass officer can't see the child and get the report...*
> Magistrate 2: *Then nobody's moving anywhere are they.*
> Magistrate 3: *It's getting worse and worse.*
> Legal advisor: *We're not as bad as some other areas but we've gone from 12 weeks to 16, sometimes 18. I know in some places they're taking 22 weeks. That's because they've got long term sick, they've got retirements that haven't been replaced. It's not because they're not working flat out, it's because of the resources.*
> Magistrate 1*: And the areas where they're taking 22 weeks, they're pinching ours.*

At least half the lawyers interviewed highlighted this issue:

> *It's taking a ridiculously long time to get reports. The damage is done by the time we come back to court after 17 weeks. If we have someone who isn't going to allow contact then three months down the line it's a whole different ball game about getting it restarted.*

> *It is more common now for a Cafcass officer to write into the court and for you to get a letter saying 'Sorry, we haven't been able to allocate this report, it's due in next month but we haven't even allocated it, we need more time, so can you adjourn the final hearing, Judge?' … It prolongs it unnecessarily because you've got people who haven't even been seen yet. If a Cafcass officer can get in there quickly enough and report quickly enough then a lot of these issues can be resolved and the parent can start having contact and can start building up a relationship of trust, with not only the child but with the parent with care. But we can't get them for love nor money now, they're like gold dust.*

Another key complaint was the lack of court time to hear cases, which meant too long an interval between filing the application and the first directions hearing, and delays in getting cases listed for contested hearings, both interim and full, or indeed getting them back in front of the court when any issue arose between listed hearings:

> *We file an application and we don't get a court hearing date before six or eight weeks. And that's good: if we were in London we'd be waiting even longer.* (Solicitor)

> *If the court had more resources so ultimately there wasn't the delay. If they say next available date after February and you get a date in June or July, it's not good. The resources need to be there to be able to accommodate the hearings. If you can't move it on till a court hearing three months down the line I don't think it does anybody any good.* (Solicitor)

> *The delays for final hearings – three, six, seven months after we've done the report and what's happening to the child in the meantime?* (Cafcass officer)

Delay, however, was not always directly the fault of the court system. The third main theme was the delay perceived to be caused by resident parents not co-operating with the court or more commonly 'spinning it out', 'playing the system', taking advantage of the court's duty to investigate allegations of potential risk to the child from contact; their difficulties in determining when a parent is deliberately seeking to avoid contact taking place and the limitations on their powers to enforce it:

> *I could write a book on how to frustrate contact, because I know every trick in the book. Don't turn up at court for the first couple of appointments, then allege domestic violence - and that could be anything, it could be 'he used to swear at me in front of the children' but the court still has to decide where the truth of that lies to be able to take it forward. Agree some kind of contact but then say the child is ill, he's at a party, he can't come, and then another 12 weeks has passed by and then you could maybe revert to he's been really harassing in that period and now I'm going to say 'X' and you have to go down that route. It would probably be quite a lengthy book, building on the experience of the cases you have seen. And it's really frustrating.* (Solicitor)

> *There are occasions where a mother will do everything she can to sabotage contact. I can think of a case where, whenever it came to a court hearing there was yet another reason, another allegation of harm, and it went on and on like that. It went on for years, it never got to a proper hearing and in the end father got indirect contact. It was absolutely awful. I did an observation and it was fine. But they did everything they could to undermine it. And that was a case where it went on far too long; this mother should have been taken in hand early on. I think the court could have been far more directive. There was enough evidence at an early stage to see what was going on and the court could have done more to enforce contact, to just make her abide. Because what she would keep doing was to agree to something and then not follow it through.* (Cafcass officer)

As this comment indicates, practitioners were not always satisfied that the court had done enough to deal with resident parents 'messing around'. We have also highlighted cases in the sample where we considered the court had not taken a firm grip on the case, in addressing, for example, repeated failure to turn up for court hearings[34].

The final main theme was that the delay in the court process was only part of the problem: by the time the case gets to court considerable time has probably elapsed attempting negotiation, complying with the public funding requirements in terms of the referral to mediation, and then obtaining legal aid:

> *If someone comes in here and says (his ex has said) he can get stuffed, he's not going to see the children, the first thing we would do is write to the ex-partner to say 'come on.' Half the time we get no response to that. So if the client is a candidate for legal aid the next thing we would have to do is refer them to mediation. A few weeks later the mediator says no response from mum. So then we apply for legal aid. Now this firm has been taking part in a pilot where we can grant legal aid that day. But everybody else would have to have another meeting with the client, fill in the form, send them off to the Legal Services Commission. Then after that you make your application to the*

[34] Cases 434; 426; 451; 713, 627

> *court and they give you a date six weeks ahead. So what's that, probably 18 weeks since the client first came in.* (Solicitor)
> *It's got to be a quicker system. Mediation is all well and good but I do worry about public funded clients, I've got to be honest. Because there are parents out there who do play the system. You have to go to mediation in order to get public funding and there is that delay. I really do think you ought to be able to get in front of a district judge within 28 days. I think the sooner the court is seized of the matter, whether it then be referred to mediation is another issue but for there to be a six to eight week delay while the mediation process and then further delay for legal aid....I think it should come to the court first.* (Solicitor)

Where contact has ceased altogether before the case comes to court the effect of all these delays can be to make the process of re-establishing it more difficult and in some cases impossible. As one of the judges interviewed put it:

> *(Delay) is a combination of various factors. First of all, the need of a court to investigate, which requires obtaining evidence. Primarily you'll obtain evidence from Cafcass. That now takes about 20 weeks, which is really quite scandalous. If you then find there's a psychological issue that needs another expert then you might be talking about another 14-18 weeks. And so almost a year has gone by before you've got the material to resolve it. And then you've got to get a court hearing date, so you've got to queue up. If, during that time, you've not been able to arrange contact, supervised or otherwise, because the child won't go, and nobody's going to drag the child along, then it becomes impossible to try and rectify it.*

We look further at this issue in chapter 10.

## Finding of fact hearings

As reported in chapter 1, over half the cases in this study (167 of 308; 54%) involved allegations or concerns raised by the resident parent about what we called 'serious welfare issues'[35]. In others there had been such concerns in the past, although they were not being raised as an impediment to contact in the current proceedings. In all there were only 114 cases (37% of 308) in which there were no issues about the alleged behaviour of the non-resident parent.

By far the most common issue was domestic violence. In total in exactly half the sample cases (154 cases of 308) allegations of domestic violence perpetrated by the non-resident parent had been made at some point and in 34% (106) it was an issue in the sample proceedings. However, as reported above, only 24 finding of fact hearings were ever listed, of which 12 did not take place. Three courts did not list any hearings, the proportions in the remainder ranging from 8% to 35% of cases in which a hearing was listed and 8% to 22% in which it actually took place. These, on the face of it, surprising findings were among the topics we sought to explore in interviews with the judiciary, lawyers and Cafcass.

[35] ie: domestic violence (34%); child abuse or neglect (23%); drug abuse (20%); alcohol abuse (21%); mental illness (13%); parenting capacity affected by learning disability (1%) or fear of abduction (15%), including removal from the U.K (8%).

The interview material in general confirmed this picture of finding of fact hearings being rare, although a few respondents demurred[36]. There were also some indications that practice had changed over time, with several saying while these hearings had been relatively common after they had been first introduced their use had subsequently declined, particularly after Court of Appeal decisions/guidance stressing they should only be held where the outcome would materially affect contact. On the other hand a few people thought that their use was actually increasing as courts became more tuned in to the issue of domestic violence and its relevance to contact.

## Why are so few hearings listed?

Asked why finding of fact hearings are not listed more often both Cafcass officers and solicitors largely attributed this to the courts' reluctance. This was variously explained as being due to the perception that there were few cases in which findings would be relevant to contact; doubts about the quality of the evidence available; a general preference for settlement over adjudication; concerns about the inevitable 'mud-slinging' exacerbating the conflict; and pressure on court time.

These themes, and a reluctance to list finding of fact hearings, emerged clearly in the judicial interviews, as these quotes illustrate:

> *We do our best to avoid them if at all possible because they are totally unproductive and unhelpful, on the whole. It just raises the temperature. And how do you decide whether he hit her or not when it's her saying one thing and him saying the other? The problem as well is that they don't take half a day or a day. They go on for three or four days and trying to get three or four days for us to sit consecutively takes a while, takes up a lot of judicial time and then that delays the whole process of trying to get the contact up and running again and a lot of blood is spilt in the course of those proceedings, all the allegations, it gets very uncomfortable.* (Judge)

> *I think the view is that the more recent the allegation the more you should have a finding of fact. The older the more you're just airing dirty washing and making things worse. For instance, a three year old allegation, even though it may be serious but there's been a bit of contact since which has then broken down, what is the point of going back to that to just air the bad feelings*. (Legal advisor to the family proceedings court).

> *The President said 'in so far as it affects outcome', which is often missed by people, you say 'why do you need it?' But no, we tend not to, if we can move it. If the mum is saying we'll have contact you tend to put those to one side, let's work on the process of getting the contact organised.* (Judge)

The courts and Cafcass also implicated solicitors who either did not raise the issue of domestic violence early enough in the case or advised their clients against asking for a hearing. Solicitors for their part acknowledged that they might not press for hearings: like the judiciary they thought there were probably relatively few cases in which they would serve any purpose; they could be counterproductive in terms of increasing conflict, clients did not want them because of the emotional trauma and/or additional cost and because of the difficulties of proving the allegations the 'victim' could be placed in a worse position than before.

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[36] Since this study was completed, the President of the Family Division has issued a Practice Direction 'Residence and Contact Orders: Domestic Violence and Harm' 9 May 2008

The only group not implicated in this '*nobody wants finding of fact hearings'* scenario were Cafcass officers, some of whom voiced their disquiet at the rarity of these hearings and their frustration at asking for hearings which were either not listed or did not happen:

> *Getting a finding of fact hearing is absolutely a struggle. At the beginning, when that process was brought in, we did use to get them, but now they are much more likely to order a report and see how it goes. So then we report and say no recommendation, you need a finding on this, and they still don't do it.*
>
> *We do have a problem with some of them. Our local judges are usually pretty good about that now, they don't like it very much but they will do it. But not all the courts we cover are good about that, let's be honest.*

This does not mean that Cafcass officers did not have reservations about finding of fact hearings. Indeed they appreciated the problems of the evidence base - with some expressing concerns that this could work against the parent making the allegations; a decision might not move the case on; and even if allegations were proved the court might well go on to make an order for contact:

> *I was involved in two very early on after the guidelines came out and in both cases the mother was simply not believed. It really affected my thinking. In theory it's such a good idea but in practice if you can't come with evidence, even with a lower standard of proof...In both those cases the non-resident parent was just so highly delighted that no-one believed mother. I seriously got my fingers burnt.*
>
> *They're hard to get, the findings can be six of one and half a dozen of the other; even if you get findings against somebody or a failure to get findings, that doesn't necessarily unlock them. I wouldn't oppose them but I'm just not over-confident that they actually move things on.*
>
> *What actually is the point of going in the witness box for a day and being cross-examined by your violent ex only to find that at the end of the day the courts are still going to award contact no matter what you say and no matter what is believed to have happened. Is that really a very fair way to treat victims of domestic violence?*

The reasons why finding of fact hearings were not listed in the sample cases with allegations of domestic violence can only be speculative. Of the 72 completed cases in this group, since in 14 the resident parent was not opposing unsupervised contact, a hearing was probably not considered necessary, while in 12 the domestic violence allegations were not the main issue, so a hearing would probably not have advanced the case.

In 30 of the remaining cases the non-resident parent had either admitted the allegations (7); been convicted in criminal proceedings (10); been subject to a non-molestation order (7); given undertakings (5) or had findings made against them in previous proceedings (1). Thus there was at least some evidence to support the allegations. In another two cases there had either been a criminal trial or a finding of fact hearing which found against the resident parent while in two it seemed that the resident parent was not believed because of their psychiatric history.

In eight cases the non-resident parent withdrew from proceedings at an early stage, usually having failed to cooperate with the process. In one of the remaining four cases the Cafcass officer advised against a hearing on the grounds that it would 'inflame' the situation. There were only three cases in which there was no indication of any of the above and there appeared to be no good reason why there should not be a hearing and rather good reasons why there should have been.

### Why are hearings listed which then do not take place?

A number of scenarios emerged from the interview data to explain why a listed hearing might not go ahead: the alleged victim decides not to proceed; the alleged perpetrator makes admissions so the hearing is not needed; the case has moved on and the parties decide the issue of domestic violence is no longer relevant or can be dealt with by undertakings; or the court decides, on the basis of the evidence submitted, that even if proved the seriousness of the violence will not affect the decision about contact. For example:

> *I have had quite a few listed with a timetable right from day one, so that I have not fully known the allegations until I've seen the statements. They come along on the day and counsel come in and we all agree that this is not a case where a finding of fact hearing is necessary because the issues are not so severe or long-standing or whatever to make any real impact.* (Judge)

> *Where there is a genuine domestic violence issue if you demonstrate to fathers that you mean business and there isn't any way of getting away from this, then they will generally try and admit at least some facts rather than have a hearing.* (Judge)

Analysis of the sample cases indicates that there were only two in which the hearing was vacated because of admissions and one where the alleged perpetrator agreed to give an undertaking. One father, who had been prosecuted for breach of a non-molestation order, withdrew his contact application before the finding of fact hearing took place. In one of the remaining cases the hearing was cancelled because of mother's advanced pregnancy. All the rest were vacated, at the request of the parties, because contact had been restarted. There were no instances where the court decided not to proceed and none where the alleged victim withdrew the allegations.

## Summary

This chapter first provided an outline of the court process in the sample cases in terms of the duration of proceedings, number of hearings, the use of welfare reports and expert evidence, the incidence of contested interim and final hearings and the use of finding of fact hearings in cases where there were allegations of domestic violence. This showed that:

- The mean duration was 10.8 months and the average number of hearings five.
- A minority of cases were dealt with quite quickly (11% of the 292 completed cases had only one hearing; 15% finished within 3 months and a further 22% within six). However 35% took more than a year and 6% more than two.

- 65% of all cases (200 of 308) had some professional evidence, typically in the form of a welfare report (196), usually from Cafcass (184). Eighty-nine cases had more than one welfare report.
- Separate representation of the children was rare (11 cases). This was typically ordered after the case had been before the court for a considerable time (mean 11 months) the decision not being taken for over a year in three cases and in one over two.
- Evidence from other professional sources was fairly unusual (77 of 308; 25%). Most came from health or mental health professionals, predominantly psychologists (21 cases); GP's (19), psychiatrists (17) or paediatricians (8) with a few cases having evidence from associated groups such as drug and alcohol support teams, mental health nurses, social workers, counsellors and therapists.
- Fifteen cases involved hair tests for illegal drug use, four liver function tests for alcohol abuse and in two reports from drug and alcohol teams. Ten cases had police evidence and two reports from experts in sexual offending.
- Very few cases (32 of 292; 11%) went to a contested final hearing, of which at least 11 settled in the course of the hearing. Contested interim hearings were more common (68 cases) but less than a third (86; 30% of 292) had a contested hearing *at any stage*.
- Finding of fact hearings on domestic violence allegations were held in 12 cases (with another 12 being listed). In nine the allegations were upheld wholly (5) or in part (4); there being only one where they were rejected. In the final case the parties agreed they had a 'volatile relationship'.

The chapter then focused on a few key features of the court process: the prevalence of settlement over adjudication; the use of an incremental approach; delay in bringing matters to a conclusion; and the relative rarity of finding of fact hearings.

Proceedings were seen to be dominated by a general preference for reaching agreed outcomes. Judges, lawyers and Cafcass officers all seemed to be signed up to this and each group played their part in trying to achieve it. The court process offers many settlement opportunities, starting before the first court appearance and continuing even into a contested final hearing. Practitioners indicated that in some instances settlement reflected parties becoming less polarised, in others it was a more or less reluctant acceptance of reality. In the process both parties are likely to have to give some ground and each may feel they have lost out. Few solicitors thought this process systematically favoured resident or non-resident parents.

Movement in contact cases is typically achieved through an incremental approach, starting by trying to get contact going in cases where it has not been happening, either by indirect, or more commonly supervised, contact and thereafter proceeding by a series of review hearings.

The prevalence of the incremental approach is one reason contact cases can take such a long time. Another is the need to investigate allegations of serious welfare concerns. Many practitioners, however, were also concerned about other sources of delay: problems in obtaining timely reports from Cafcass; lack of court time; resident parents playing for time and the time it could take to get a case into court in the first place, particularly for publicly funded clients.

The relative scarcity of finding of fact hearings was attributed to a general coolness towards them, mainly on the part of the judiciary, but also shared by solicitors and their clients. Some Cafcass officers were concerned about this and frustrated at

asking for hearings which were either not listed or did not take place. Analysis of the 72 sample cases in which domestic violence was an issue but there was no finding of fact hearing generally indicated valid reasons why a hearing was not necessary. There were only three exceptions.

# Chapter 10: The courts' approach to contact applications

## A de facto presumption of contact

As noted in chapter 1, this research was commissioned in the context of attempts by pressure groups and the parliamentary opposition to introduce a statutory presumption of 'reasonable contact' into the Children Act 1989 and claims that non-resident parents who went to court for a contact order could end up with little or no contact for insubstantial reasons.

The data presented in earlier chapters of this report should have demonstrated that in fact most non-resident parents who apply for contact get it and that while some do not this is very rarely because this is what the court has ordered and that cases where there is no good reason for limited contact are very much the exception.

The interview data strongly support this picture, with judges, magistrates and legal advisors all reporting that, while there is no statutory presumption, the courts operate on a *de facto* presumption that unless there were good reasons to the contrary there should be contact. Moreover, it was not just a matter of dutifully following case law; interviewees often voiced their own commitment to the principle, typically amplifying their comments with reference to research:

> *I have no doubt about it. Courts in my experience always start from the proposition that it's in the interests of the child to have a relationship with both parents. I think the learning of child psychologists is that it is important for a child to have the knowledge of who its parents are, faults and all. It's been said in cases going back to long before the Children Act that access is the right of the child and I think all judges will start from the proposition that there should be contact. If it's being said that there should not be then I think it's for the opposing parent to justify that proposition.* (Judge)

> *The basic principle at the moment, unless there's some really really strong reason why a child shouldn't have contact, then that should be taking place*. (Magistrate)

> *All the cases say – apart from cases of domestic violence - that there is a legal presumption. And also this panel has had presentations from child psychologists , paediatricians, psychotherapists, over the years who have extolled the virtues of contact, for very good reasons. That the child knows its roots, sense of belonging and all those feelings and that's echoed by the cases that have always been – have led us, and should lead us. It's just not in statute.* (Legal advisor to the magistrates).

Lawyers and Cafcass officers confirmed that this was how they saw the courts operating:

> *The judiciary start from the point of view that it is in the child's best interests to have a meaningful relationship with both parents and there's lots of research about the emotional damage of not having that. All the courts I appear in start from that point of view.* (Solicitor)

> *The judges are going to be saying unless there are very good reasons then contact will be imposed.* (Cafcass officer).

Further evidence comes from the transcripts of court hearings, with judges emphasising to parents the pro-contact stance the court would usually take:

> *We all sit around here hoping in every single contact case that mum, dad and the kids can re-establish a relationship. That is the starting point. It is not always the ending point but that is the optimism which everyone starts these cases on.*
>
> *Can I just say this: I will not be trying the case, but you all know that the expectation of the court is that a child is able to meet the absent parent. There are a few cases where that cannot happen, where the child's safety requires that he not be in contact with the absent parent; but in the great majority of cases, even where the caring parent does not agree, an order for contact is made.*

Moreover the interview material also indicates that this is not just something to which the courts pay lip service; they try very hard to give effect to their philosophy, the archetypal comment being that they '*bend over backwards'*.

> *As a bench we've been conditioned to believing that parents are important and we do everything we can to try to get the child with parents. That has its limits but there is a great amount of effort.* (Magistrate)
>
> *Once they have got hold of it they will do their utmost. The judges are well-intentioned. No question about that. They really do try to get contact.* (Solicitor).
>
> *I think the courts do everything they can to establish contact.* (Cafcass officer).

Indeed some practitioners questioned whether the push for contact on occasion went too far:

> *The courts say 'it's much better for a child to have a relationship with an absent parent' and I think it probably is, and I know that's the starting point but I sometimes think that that starting point forgets everything else, forgets what's gone before. I think for some children it would be better if father just disappeared, or mother went away rather than having on-going court proceedings which I don't think are in their long term interests.* (Solicitor)
>
> *The judges have been literally bending over backwards even if it's a no-hoper to give fathers contact, even when the case should be closed. I've got quite a few examples. Even if it's a domestic violence case, it's still the case that the courts just bend over backwards to try and assist and accommodate fathers.* (Solicitor)
>
> *The no stone unturned as an approach of the court is something we are pulled up against again and again. 'Are you sure you have done everything? Are you sure you couldn't just observe or supervise a couple of contacts and that would unlock the situation'.* (Cafcass officer)

The group which expressed the most reservations were Cafcass officers, who voiced concerns, variously, about the pro-contact approach marginalising serious welfare issues; losing the focus on the child; downplaying children's clearly expressed and firmly held views; and damaging children through an unwillingness to call a stop to proceedings which are not getting anywhere but are exposing them to prolonged conflict and possibly jeopardising their relationship with their main carer:

> *I think that presumption can very much cloud serious welfare concerns. There are some judges who you might characterise as contact at all costs, others who are far more safety and welfare orientated.*
>
> *People will always say the child's welfare is paramount. But I think there is a way in which it was caught up and is still caught up... One of the children's interests, ideally, is to have a relationship with both parents. So therefore the idea of children's rights to have this if possible has got caught up with father's rights or mother's rights. When the courts get stroppy with mothers who won't allow contact I sometimes think they don't stop enough and say well actually they might have a damn good reason for it. The presumption of contact has been a turn round. It's the child's right to have contact but actually the thinking, certainly in the adult and sometimes in the court, is about the rights of the adults.*
>
> *I think the strong presumption of contact being in a child's best interests makes those entrenched cases very difficult to deal with and that's why they stay in the court system for so long, the paramountcy principle just seems to get lost in the presumption. They are the very cases where you have to make very tough decisions and get those children out of court.*

## Factors militating against making the de facto presumption effective

There can, we think, be no doubt that the courts operate on, in effect, a presumption of contact, even though this is not in primary legislation. That does not necessarily mean, however, that they are always able to put that presumption into effect. Indeed clearly there will be cases where it would wrong to do so. All our interview groups identified circumstances in which the court would not order direct contact and even, in some cases, any contact because of the risks this would present to the physical safety of the child or the resident parent.

> *There would need to be a very good reason why. Usually there we are looking at something significant in the context of possibly violence, proven allegations of abuse. Then we might go down that line.* (Magistrate)
>
> *That's generally because someone has been adjudged by the court to have been violent and that has made the mother unable to countenance contact, something like that. Generally it's conduct on the part of the absent parent that leads to that.* (Solicitor)
>
> *Domestic violence. Not necessarily domestic violence in itself but what impact it would have on the child, if the child has witnessed or been caught up in it, or been traumatised by what they've witnessed. Allegations of sexual abuse against the child.* (Solicitor)

However such circumstances were seen to be extremely rare: in general, even where there was an element of risk, the court would be looking for ways to ensure that face to face contact could take place safely, or failing that, set up arrangements for indirect contact:

> *Where a parent is a Schedule 1 offender, a history of sexual offences particularly against children. But you would still allow contact if it was supervised.* (Magistrate)

> *I've got a case at the moment where there has been horrendous domestic violence, that worries me sometimes, and I can see where mum is coming from, but even if we have a finding of fact hearing it doesn't always debar contact, it's just managed in a different way.* (Solicitor)

There are also, however, cases where the court is unable to secure direct contact in circumstances which would not ordinarily warrant contact being refused and indeed where the court might consider that it would be in the child's long term best interests. Typically these are where the resident parent, or the child, is resistant to contact and is impervious to the court's attempts to shift their position.

## The implacably hostile resident parent

> *I think that on the whole we are, weasel words I know, relatively effective (in getting contact). Where we are highly ineffective are cases where the resident mothers take the view that they don't want contact to happen. And in those cases it is very very difficult*. (Judge)

> *There are a very few cases, which occupy a disproportionate amount of the court's available hearing time, where contact is refused by the resident parent and they're extremely difficult.* (Judge)

A degree of hostility to contact on the part of the resident parent (fathers as well as mothers) was seen as being very common when a case first arrives in court. The reasons for this vary widely. Some parents will have well founded safety fears because of domestic violence, drug and alcohol abuse, or child maltreatment. For others the hostility reflects hurt and anger at the breakdown of the relationship, disputes over property and money or a desire to create a new family unit and cut out the biological parent:

> *Hostility is often caused by the fact that there's been an acrimonious breakdown in the relationship and the parents are still fighting that battle and it spills over into a dispute over arrangements for contact. That's quite a common situation in my experience.* (Judge)

> *There are cases where there is huge acrimony about the financial arrangements. In those circumstances, for mothers to wave goodbye to the child for a contact visit when they are saying that father is keeping them short of money and they're on the breadline...* (Judge)

> *They've got a new man and they want their happy family and father interferes with that. That's relatively common.* (Magistrate)

Resident parents, it was also said, do not necessarily subscribe to the court's philosophy that contact is generally in the interests of children and the hurt of the

separation and the conflict with the other parent may blind them (and indeed the non-resident parent too) to the needs of their children, who all too often can be used as pawns in the parental struggle:

> *I don't think that the vast majority of the general public place as much weight on the importance of contact to a child as the judicial system does. I do think that most parents want what is best for their child but they just don't recognise that it is helpful to a child to grow up knowing both parents.* (Judge)
> *Quite often we find that in contact cases the parents are just using the child as a pawn, and especially the resident mother because it's just a way of getting back at a partner she no longer has a relationship with other than through the child and it's the only way they can do that.* (Magistrate)

It was not only magistrates and judges who reported encountering such parents. Solicitors and Cafcass officers made very similar comments:

> *There are certain resident parents and they're quite a big group I guess, who have the attitude that they're looking after the child and their relationship with the child is considerably more important than the relationship with the other parent. And therefore contact has a small part to play in the child's life, it's of relatively little importance and more of a nuisance than a benefit. That's a fairly common attitude.* (Cafcass officer)

> *Across the board of parents the majority do (share the court's view on contact). But the ones who are in court are there because there is a problem, it's not working in some way and that can mean that the resident parent just does not believe that any benefit will derive to the child from having contact. 'He's a useless so and so'. Generally speaking that attitude is coloured by the emotion surrounding the relationship.* (Solicitor)

Persistent unreasonable hostility, however, was generally seen as quite unusual, as these comments from the judiciary demonstrate:

> *What we're talking about is the real hard core. And there aren't many. They might get publicity but they're extraordinarily rare in terms of what goes through this court.*

> *Persistent obduracy is not very common.*

> *Sustained hostility is quite rare.*

Thus in most cases the court process was seen to succeed, if not necessarily in dealing with the cause of the resident parent's hostility and therefore changing their attitudes, at least in overcoming their initial resistance so that contact can take place. These perceptions are backed up by the data from our sample cases. Of the 109 cases in which the resident parent was initially opposed to contact, for any reason, in 68 (63%) at least some face to face contact was established in the course of the proceedings, while of the 100 completed cases in which the outcome was known 56 ended in direct contact. Moreover only six of these went to a contested final hearing, none of them on the issue of whether there should be direct contact.

It must be emphasised, too, that these cases included a wide range of reasons for opposing contact. As reported in chapters 4 and 5, there were very few examples of cases ending in no direct contact where, in our view, the outcome could be regarded as unfair to the non-resident parent in that there were no welfare concerns of

sufficient severity to warrant this. Of these we found at most four which appeared to fall into the category of 'implacable hostility' of which at least one contained some elements of domestic violence while in the second there was some uncertainty.

As we have also commented in earlier chapters, where possible courts seek to achieve their objective of establishing contact through encouragement and persuasion, on the basis that securing co-operation is likely to be more effective than simply waving a big stick:

> *What you hope is that through discussion and argument you can bring them round to a reasonable way of seeing what the best interests of the children are.* (Magistrate)

> *It's much better if you can address mother's reluctance. If you demonstrate to mother – it's extraordinary, here am I talking about demonstrating something to mother rather than mother demonstrating something to me as a tribunal which has got to resolve it, but in fact I think that's what you have to do because mothers with residence do have an enormous amount of power really and it's all very well saying the court's got the power, at the end of the day, practically speaking, you don't, it rests with the parent with whom the child is living. So you have to persuade her and convince her that that's the right thing to do. In most cases you can actually do that.* (Judge)

> *My experience is that very few parents are wicked, in the sense of deliberately trying to damage their child. They might want to hurt the other partner for a while but they're not really wicked people. They sometimes have a genuine grievance or a misunderstanding, or a feeling of hurt that hasn't been mollified and there are all those things that are usually the causes behind this reluctance to engage in contact. I think if you can address those sensibly then you're likely to get a better resolution.* (Judge)

Hence, it was said: '*you're cajoling, you're persuading, sometimes you think you're more like a social worker than a judge*', albeit in the context of making the court position on the desirability of contact in most cases clear:

> *I adopt a conciliatory approach, unless they are so defiant that you have to be a bit stronger. What I do is have the cases back in front of me frequently, and try to get agreement from the mother 'we'll do it this way and of course I fully understand that you're very anxious but how about going to a contact centre, how about somebody supervising', when they say 'well the child will be frightened', 'well you can go with them to the centre before the father comes to see how things go'. It's a gently, gently approach. Sometimes you get to the stage where someone is just so defiant that you've got no alternative but to make the threats. Sometimes that achieves something.* (Judge)

> *If there is a problem with the mother resisting contact I will make it quite clear that unless there is a very good reason to the contrary the courts take the view that it's in the interests of the child that there should be substantial contact.* (Judge)

> *Our district judge will push and push for contact at first appointment, and will cajole people into it. I think she's right, I think she does it really well. She excels at contact cases, she's really good at breaking the ice and making them realise that contact is going to happen.* (Solicitor)

When these efforts are ineffective sterner methods come into play. Homilies become harsher; criticism more overt; more or less veiled threats of the consequences of continued resistance made, particularly the possibility of a change of residence:

> *Once you've got a case like that in court there's a fair amount you can do with it in that you point out to them that we are looking at the interests of the child and it's time that you did as well. Forget about yourselves, forget your grievances, all we're concerned about is the child seeing both parents unless it's dangerous to do so. Therefore get your act together. And that's what we will order so you may well agree it.* (Magistrate)

> *This is a mother who in my view will do everything she can to thwart contact.* (Judge. Extract from court transcript).

> *I would tend to say 'If we go on this route it might result in a change of residence and I might decide that the welfare of the child requires her to live with her dad. It may be that that won't happen overnight but it will come within a short term and is that what your client wants?' And so on.* (Judge)

The magistrates may send the case up to the county court, partly to emphasise the seriousness of the situation but also because of the wider range of sanctions the higher courts can employ.

> *We would tend to transfer those cases up. A judge can talk more readily to a parent and has more clout. And they can attach a penal notice to directions.* (Magistrate)

If the district judge is unable to make any headway s/he may send it up to the circuit judge, again partly to access the greater powers available, partly to emphasise the seriousness with which the court regards the matter, which, as one of our solicitor interviewees confirmed, could actually be effective in some cases:

> *By the time it leaves us, if we have to crank it upstairs, it's become pretty entrenched and the circuit judges have really got fights on their hands. And there's been a fair bit of water under the bridge and you've tried to knock it into shape. You then need someone with more power. They suddenly realise they're leaving the DJ and they're going to see a judge and it's going to be in court as well (rather than in chambers), it's on a different level. (*District judge)

> *What we do is threaten our clients with the judges; if you end up on some non-compliance committal proceedings heard by the judge, they are far more robust (than the district judges). And clients respect it more, it's not such a cosy sit-down chat, you are entering a courtroom with them sitting up high above and that's how they thought court would be.* (Solicitor)

Each of these strategies may have an impact, the court's persistence gradually wearing away the resident parent's resistance. However it is fairly unusual for sanctions to be actually employed. There were only 16 cases in our sample in which a penal notice was made, most of them (12) in the course of proceedings to secure compliance with interim contact orders, and three to secure the resident parent's attendance at court. Judicial interviews revealed a general reluctance to go down this road:

> *We will sometimes put a penal notice on the order, although we don't like doing that,*
>
> *I've had one or two where I've had to refer them to the circuit judge for penal notices. But I do get a lot more applications. In the majority of cases I don't actually refer them because I say let's not up the ante here, let me adjourn the application and try something else.*

A large part of that reluctance is because if a contact order which has been endorsed with a penal notice is breached the ultimate sanctions currently are committal to prison or a fine, neither of which are seen as appropriate in most cases and which are almost never used:

> *The sanctions for breach of the order are fine or imprisonment, and most of the parents that we are dealing with, if you fine, it comes out of their social security money and impacts detrimentally on the child. And how can you send to prison a mother with several children? It goes through stages, we are encouraged to be bold enough to send mothers to prison. But on a practical basis it doesn't work. And you're dealing with these mothers who will tell the kids as they're coming out of the front door with their bag, 'I'm going to court, your father is getting me sent to prison'. And how that is going to assist the relationship?* (Judge)
>
> *If you threaten people with imprisonment they then take on a martyr's shirt and say 'I'll go'. And once you've done that you've spent your powder as a court, really and in a way you've surrendered your jurisdiction to the mother. You've punished her but you haven't achieved anything; you've given her the power to control the case. I think it's a defeatist thing to do, quite honestly.* (Judge)

Only one of the judges interviewed said that they had ever sent a resident parent to prison. There were no examples of this in the sample and only one in which a fine was imposed.

The implied threat of a penal notice may be more effective. There were several cases in the sample in which an application for a penal notice was adjourned, sometimes repeatedly, when a degree of progress was being made. Thus in one of the hearings for which we had a transcript the judge explained why s/he was not prepared to endorse the order at present:

> *I'm doing that for two reasons. The endorsement of a penal notice is a serious matter and I have got to be satisfied that it would be in the interests of the child. I accept that there have been previous problems and that there have been times when contact has not taken place. However I'm looking at that which is the situation at present and with two exceptions, I accept that contact has been taking place in accordance with the orders previously made in recent times, and it does not seem to be in the child's interests that a penal notice be made now. That doesn't mean that it cannot be done in future, but I would hope that that need will not be there because contact will be taking place.*

Similarly the threat of changing residence may be effective, but although this was less unpopular than committal, actually doing so remains unusual (there were no instances in our sample) and as interviewees pointed out, it is often not a viable option:

> *It's tempting to threaten change of residence but often that isn't a solution, the father can't provide care and the child may be better off with mother*. (Judge)

> *This idea that you say right, if you don't comply with the contact order we will transfer residence, in the vast majority of cases that is just impossible because the child hasn't been having contact with the father, so to say right, you've not seen your father for 12 months but you're going to go and live with him, is just not on*. (Judge)

At the end of the day, then, while many resident parents who start off expressing hostility to contact are likely to come round, interviewees acknowledged that there were a small group – typically described as '*a handful'*; '*very few'* - who remained obdurate. The court will be very loath to admit defeat – as was particularly evident in our long-running incomplete cases (chapter 8) – but may find itself with no other option:

> *You try everything you can. We use all the weapons that we have available. We use the threat to change residence, we use persuasion, we use the responsibility of the parents. You push and push and push but if the resident parent does not play ball you're stuck. Some people you will never ever ever change. That's human nature.* (Legal advisor to the magistrates).

> *I find contact some of the most difficult cases I have to deal with. And I come back to the fact that you know, or think you know, what is right for this child but you can't actually get the adults to do it. And we have no teeth, we have no sanctions. Well nothing that I think is realistic. (*Judge*)*

> *I heard one judge saying, when dealing with this problem of what do you do with a mother who says I can't bring myself to allow contact, the judge said 'first you persuade, then you cajole, then you threaten, then you give up'. You hope that you can stop short of giving up.* (Judge)

Thus many of our judicial interviewees saw the need for the court to have more realistic, appropriate and effective options to deal with such cases, which though uncommon, took up a great deal of court time and left them with a feeling of failure. As to whether the provisions in the Children and Adoption Act 2006 will do this it has to be said that there did not appear to be a great deal of enthusiasm. We look further at this in chapter 11.

## Children who are resistant to contact

An even more difficult challenge to the court in seeking to establish contact is where the child persistently refuses contact.

Children who are reluctant to have contact or are described as such by the non-resident parent quite frequently feature in contact proceedings. In a quarter of the sample cases (77 of 308) the index child was said to be refusing face to face contact at some point (and in a further eight a sibling was). Less than half these cases (35 of 75 which had completed) ended in direct contact (compared to 56% of the cases where the resident parent had initially been opposed).

Practitioners perceived the reasons for children's resistance to be very varied. There are children who have had bad experiences with the non-resident parent, particularly having witnessed domestic violence; those who are reacting to their own hurt at the

break-up of the family; those for whom contact is unrewarding. Then there are those whose resistance is felt to be more due to their wish or need to side with the resident parent, for whom expressing a desire to see the other parent may seem to be disloyal. This was seen as a more common scenario, particularly as a reaction to parental conflict, than deliberately poisoning a child's mind which, although it was acknowledged to occur, was relatively rare:

> *There are a few cases of deliberate alienation, malicious. More common is the child is aware of the conflict, knows it would upset mum, it's a matter of survival to side with mother, unconscious.* (Judge)

> *Sometimes, where there has been an acrimonious separation, which may have led to mum and the children feeling quite abandoned, maybe the children pick up, where mothers have experienced depression or difficult financial circumstances, where there has been a real impact on the mother and the children. The issue of money and maintenance often gets in the way of contact. And then children might feel disloyal, having seen their mother's distress, if they then go to see the parent who is being portrayed as the one who has caused all the problems. So the children are in a very difficult position.* (Cafcass officer)

> *It could simply be because mum's created an atmosphere in the home of tension and difficulty, gets very upset when contact is about to take place and the little lad doesn't want to go because he doesn't want to upset his mummy. The influence in those cases may be quite subtle and I'm not sure that the child has actually made up its mind. It may simply not know what to do but doesn't want to see mum get upset. It's easier, if you're living with your mum, to avoid any conflict with her simply because you can't cope with it as a young child.* (Judge)

The problem for the court is first, identifying the reasons in any particular case, which may not be immediately apparent, and then, providing that there is no other reason why contact should not take place, trying to address it. Sometimes this will be quite straightforward: an interview with a Cafcass officer can show that while the child may have been telling the resident parent that they did not want to see the other parent, in fact they are either ambivalent or actively want to, or that their concerns about expressing their positive feelings about the non-resident parent can be addressed. An observed contact arranged at the Cafcass office may show that that a child who has been, or described as being, resistant or frightened, may show no such reactions or swiftly lose their reticence.

> *The best step is to ask Cafcass to investigate and report. I've read a number of reports where the officer says 'I had a meeting with the father, discussed it with him, the children were brought to the Cafcass office to meet him' and quite often it goes on to say what a warm relationship it was, how the children hugged their father, sat on his knee, were very affectionate.* (Judge)

> *Cafcass will often take an active role trying to persuade children that it would not upset mother to say they want to see Dad.* (Judge)

In other cases, however, as in several of those described earlier in this report, the children's resistance is more firmly entrenched.

A variety of strategies may be adopted to deal with these more intransigent children. There is likely to be a more in-depth investigation into the reasons for their views,

typically via Cafcass, at least initially, but also perhaps including more specialist assessments:

> *My response in that situation has been in some cases to give permission to the parties to instruct a child psychologist or psychiatrist to interview the child with a view to answering these questions: 1) what is it that has caused the child to express these feelings; 2) are there steps that could be taken, whether it's actions by the parents or counselling or something else to help improve the situation?* (Judge)

There may be therapeutic intervention, perhaps (though rarely) under a family assistance order. A court order may be imposed to relieve the child of the responsibility for making the decision or alternatively there may be a period of indirect contact to try to take the pressure off. Where the resident parent is considered to be insufficiently supportive of contact, or actively undermining it, then a similar approach may be taken as with those who are seen to be implacably hostile ie starting with encouragement and persuasion, moving to criticism and threats of a change of residence or penal notices. In a few cases, typically where none of these strategies have worked, the court will make the child a party.

> *Those are the cases where you would think really hard about a 9.5 guardian. It shouldn't be underestimated how valuable that is.* (Judge)

> *My experience is that often it's the appointment of a 9.5 guardian that gets things moving*. (Judge)

All these processes were evident in the sample cases.

Both the interview material and the file data indicate that the courts are very persistent in trying to overcome a child's resistance where this is not seen to be well-founded. However they do face a fundamental dilemma: how hard, and for how long, should they try to secure contact when a child's views are consistently and strongly expressed and/or the child is becoming distressed in the process. For some Cafcass officers the answer to that one is: not as long and hard as they are doing at the moment:

> *There was a time when if children were adamant the court would obviously pursue it but eventually the child's view would be acknowledged. But now, if they really really don't want to go, for whatever reason, they have to jump through a heck of a lot of hoops, they really do. That kind of case now will go through the normal welfare report and then it will go on to perhaps a 9.5. Often a psychological assessment of the child. All of this will go on and on and on, with quite old children sometimes. We're always saying we should listen to children but when a child really definitely indicates, from their behaviour and from what they're saying, that they do not want to do that it's extremely difficult. At some point in those cases we switch from the position of contact is good and it's good for you to know your parent to a position of wanting to protect the child from the system which is reluctant to listen to the child's voice.*

> *I've just been in court on a situation which has gone on for six years. Threats of change of residence have been made, penal notices have been made. At the end of the day you have to accept that however robust the court is this actually will not solve it. And then it's time to pack up. Because actually, almost always, anything you do is going to make a difficult situation worse for*

> *the child. And to do more become professionally abusive. You feel as if you have become part of the problem, bullying a child. I wrote one report on a case saying you cannot go on getting different individuals to talk to this child until they say yes, because that's what was going on*
>
> *I was ordered to take a child to see his father. He had demonstrated by his behaviour, he'd made it very clear that he couldn't do it, that he didn't want to do it. That was a situation where I was ordered to do something I felt wasn't in the interests of the child. It was the worst day of practice in my life. I felt I had put emotional pressure on him. It was a disaster. He ran away.*

In some cases, however, even the courts, no matter how reluctantly, have to call it a day.

> *Sometimes you have to make a judgement and say really this is it, we can't do anymore. Very rarely. I hate doing it, it really gets to me. The cases where you end up giving up are perhaps not because of the lack of sanctions, but because there has been such a length of time without contact and the child has taken on the views of the resident parent to such an extent that no matter what you do, they are saying that their father or mother is horrible, awful, don't want to see them. And so the implacable hostility of the parent becomes the alienation of the child.* (Judge)
>
> *I've done two cases recently where the children are with the father who has so influenced the children in each case that they won't see the mother. One I had to give up on, I sent the kids off to a psychiatrist and psychologist and in the end they both said that to pursue this further is going to be damaging to these children and all you can hope is that in time these children are going to be curious. Mum had left father because he had been violent and the father had told all sorts of lies about what had happened and the children ended up believing it. Those cases are horrendous. But when you have a psychiatrist and a psychologist both saying to do anything further will be damaging, you have to give up.* (Judge)
>
> *Where the child is of an age where the court has to take real notice of their wishes and feelings, it's extremely difficult. Even if the court believes that the child is set up by the mother, either consciously or subconsciously. I'd say those cases are the main cases where the non-resident parent fails to get substantial contact. And it's extremely difficult to do anything about it. We have our Cafcass reports, we have private reports, there's a contact service which is very very good. We go to psychologists. And at the end of the day there are still a number of cases where the court cannot make an order because it is pointless to do so against the very clear wishes and feelings of an older child.* (Judge)

Before that point is reached, however, the non-resident parent may well have decided to give up. Of the 61 cases in our study which ended in no direct contact, there were 35 in which the child had expressed opposition to contact. In 25 of these the non-resident parent either formally withdrew their application (14) or opted out of the court process (9). Seven cases ended in a consent order. There were only three cases which were decided after a contested final hearing.

## Non-resident parents who do not pursue their applications

> *What I often find, particularly with non-resident fathers, is that you have to encourage them to stick at it. Because very often they give up very early and if you can encourage them to keep going and advise them that it will ultimately benefit the children and they do have the staying power, then eventually it will work. In most cases, it does, but very often it will depend on their own staying power.* (Solicitor)

> *I try and persuade them not to (withdraw) but a number do. They just say, I have been back and back to court for 18 months, I've got nowhere, I hope the child will in time be interested.* (Judge)

> *It is a problem that children's interests are not always determinative because people give up. We don't have any say whether the case should be withdrawn or not. We might think it shouldn't be, that the child actually should have a relationship with the parent.* (Cafcass officer)

Even if the court is prepared to continue trying to get contact going the non-resident parent may decide that they do not want to/cannot persist. Of the 61 cases which ended with no direct contact expected to take place there were only seven which had a contested final hearing. In contrast 24 were formally withdrawn, 17 effectively abandoned; nine agreed and four not agreed but not formally contested.

One of the key questions then, is why do non-resident parents 'give up'?

> *They can be worn down by the process if it's prolonged. Expense is a very real issue, or they can just be disadvantaged because they can't afford to keep going. And on occasion it's because what they seek is unrealistic and they are given that advice and walk away. Some non-resident parents won't compromise, so they see settlement and anything less than what they want as failure. So rather than accept whatever is proposed, including by the Cafcass officer, they simply won't pursue it.* (Solicitor)

As this comment illustrates, the interview data suggests a wide spectrum of reasons. There were, however, a number of key themes. First, the cautious and incremental process favoured by the court, particularly where there are allegations or the child is resistant, means that non-resident parents can feel they are having to jump through a whole series of 'hoops'. Some may be unwilling to do so:

> *The court will quite often suggest a contact centre as a good way forward. From the child's point of view that's what's needed. Minimal contact, it may only be an hour but it's happening on a weekly basis and that child has got a sense of 'You're still around, you're my dad, you're still interested in me'. From the father's point of view that's outrageous. 'I'm not going to a contact centre, why should I when she gets to see them every day'. They cannot set aside their own need, their understandable need, for the sake of their children's need to maintain a certain level of contact whilst we get at the overall picture and have a hearing and have a full-blown investigation.* (Solicitor)

We noted four cases like this in chapter 4, where the non-resident parent withdrew despite a positive welfare report.

In contrast some parents may be acutely sensitive to the needs of their child and decide to walk away because the continuing conflict may be detrimental to their welfare:

> *Some non-resident parents will say it's harming my child, I've got to give up.* (Cafcass officer)

> *Some of them actually want to do what is best for the children … Is it good for my child to be embroiled in this dispute?* (Solicitor)

Most commonly, however, interviewees suggested that non-resident parents reach a point where they just feel they cannot continue the battle. They may think they are not making any headway or that progress is too slow and halting; or that no matter what the court tries to do they will never achieve workable contact. Hence, it was said, they get '*worn down'* '*exhausted*'; '*disheartened*'; '*frustrated'* and just '*run out of steam'*, particularly when proceedings go on for a long time:

> *I dealt with one a few years ago where mother denied paternity. The judge ordered a test, the mother failed to take the child for it. The judge said the court is entitled to infer he is the father and listed for a welfare report. By this time the chap had been in this system for six to nine months and he was heartily sick of it. Mother was making life difficult for him outside the court; he'd had various threats from unsavoury characters she knew. And after a while it was arranged by Cafcass that he would have a meeting with the child, who was still just a baby. He went and then said to me, 'it was great to see my child but I know for a fact, through the threats I've had, this is never going to go away and I would rather withdraw now'. He said I'll see her when she's older. I thought how sad, just complete manipulation of the system and of course external factors*. (Solicitor)

> *Occasionally you get a non-resident parent who throws in the towel because the other parent has made it so difficult for them. They just can't go through it anymore*. (Cafcass officer)

Examples of cases ending in no face to face contact in which this appeared to apply have been given earlier in the report[37].

Apart from their stamina and will to continue, however, many of our interviewees also suggested that some parents simply do not have the financial resources to carry on, commenting particularly on the inequity of the resident parent often being the one who was publicly funded and therefore able to continue their resistance with the aid of their legal representatives, the other faced with spiralling costs the longer the proceedings go on or having to become a litigant in person.

> *One of the grouses that fathers will have, and it's understandable, is that the mother will get public funding, the father won't, because he's working. I'm sure that a lot of fathers see the system tipped in favour of the mother because she will get funding for what the father thinks is an unsustainable position. She will have a barrister and a solicitor and not be paying a bean, he will be paying a great deal of money or be acting in person*. (Solicitor)

> *What I think about the system is that the financial side of managing proceedings is often ignored. Very often an absent parent who is struggling to get contact will give up because he decides it is costing him far too much*

[37] Cases 340; 426; 434; 609; 902; 934 and 1007.

*money. And sometimes my feeling is that is a great shame and contrary to the welfare of the child. But there is not much that we can do, we're pretty powerless if a father decides he's not getting anywhere and it is time to cut his losses.* (Cafcass officer)

*I had a very sad case a little while ago where mother was so opposed to contact, everybody was saying contact was good, everybody was saying he was a good father, he would be good with this child, but mother just wouldn't let this child go and after three years they pulled his public funding. His circumstances had changed, he went just over the limit and then he couldn't afford to pay me. I thought that was a very bad deal. And the judge, when we said we were going to have to bow out, said it's very sad that's it come to this.* (Solicitor)

In view of this strong theme we examined our 39 sample cases in which non-resident parent ended up with no contact at all. This revealed that the proportion of resident and non-resident parents who had not been legally represented at all during the proceedings was exactly the same and very small (4; 10%). Most parents were also represented throughout proceedings (74% resident, 79% non-resident parents). Thus it does not seem from these figures that non-resident parents are disproportionately disadvantaged in terms of representation (table 10.1).

**Table 10.1: Legal representation and legal aid**

| | Resident parent | | Non-resident parent | |
|---|---|---|---|---|
| | No. | % | No. | % |
| *Represented throughout* | | | | |
| Legally aided throughout | 23 | 59 | 21 | 54 |
| Legally aided for some of the time | 0 | 0 | 2 | 5 |
| Not known if ever legally aided | 4 | 10 | 5 | 13 |
| Never legally aided | 2 | 5 | 3 | 8 |
| *Total represented throughout* | *29* | *74* | *31* | *79* |
| | | | | |
| *Represented for part of the proceedings* | | | | |
| Legally aided some of the time | 2 | 5 | 3 | 8 |
| DK if legally aided | 2 | 5 | 0 | 0 |
| Never legally aided | 2 | 5 | 1 | 3 |
| | | | | |
| *Never legally represented* | 4 | 10 | 4 | 10 |
| | | | | |
| (N=) | (39) | | (39) | |

In terms of public funding again there did not appear to be much discrepancy. Four resident and four non-resident parents were legally represented throughout the case but were either never legally aided (2 resident, 3 non-resident) or were publicly funded for only part of the time (2 resident; 1 non-resident parent). Similarly where parents were legally represented only for part of the proceedings non-resident parents were marginally less likely to be in receipt of public funding for that period (3 compared with 2 resident parents) but conversely resident parents were marginally more likely to have no funding at all.

A case by case comparison, however, indicates that there were seven cases in which there was clearly some inequity in terms of legal representation or public funding

which could have worked against the non-resident parent: six in which the resident parent was legally represented and legally aided throughout the case but the non-resident parent was not and one in which the resident parent was legally represented for part of the time, although the funding position was not clear, but the non-resident parent was not represented at all. However there were also six cases in which the inequity was in the other direction: three in which the non-resident parent was legally represented and aided throughout but the resident parent was not and three in which the non-resident parent was legally represented throughout but the resident parent was not represented at all or only part of the time.
Detailed analysis of the sample cases indicated that there were two in which the issue of inequitable funding clearly played a part. Indeed in one, as reported in chapter 4[38], father's letter withdrawing his application (after the case had been before the court for 14 months) spelt this out: '*mother has had legal assistance throughout, whereas I have spent a fortune on getting nowhere'*. Although the judge refused to allow the case to be withdrawn without a hearing, in view of the favourable welfare report, father did not turn up. We highlighted this case in chapter 4 as an example of an outcome which could be regarded as unfair to the non-resident parent.

In the other case, in contrast, father's legal aid funding was withdrawn following an adverse welfare report. The circumstances of this withdrawal are distasteful in that mother contacted the Legal Services Commission to inform them and it is remotely possible that if father had been allowed to fight on he may have eventually achieved contact. However since he had been banned from the contact centre because of his behaviour; the Cafcass officer had stipulated many issues he would need to address and his co-operation with the court process had been patchy, this seems unlikely. We find it hard to conclude that the outcome was unreasonable.

The circumstances of the other cases in which there was a degree of inequity do not suggest that this played any significant part in the outcome.

## Enforcement

> *I suspect that your data will suggest that there is a reasonable amount of contact for fathers; that's what I would suspect. But what we get back in court is the reality that mothers don't cooperate and that's the biggest area where you get the argument that you don't get enough contact*. (Magistrate)
>
> *The main problem is not getting a contact order but enforcing it if it is breached.* (Solicitor)
>
> *I think the system is quite good at effecting an order and pushing people together and trying to get them to agree to try to compromise, the system is quite good at that. But the number of occasions when you come out of court with an order and six months later the client is back saying well I've got the order but it doesn't happen. In common with all other aspects of British law I think the enforcement side of all civil justice is very poor. In the bad cases you go round the loop again and again.* (Solicitor)

Despite the existence of obstacles which can impede the court's attempts to establish face to face contact, the fact remains that most non-resident parents who go to court to seek contact actually get it. This applied to 78% of all completed

[38] Case 609

applications where the outcome was known (207 of 266) and 80% (165 of 206) of first time applications. Moreover, as noted in earlier chapters, where a case ended with no direct contact expected to take place this was rarely as the result of a court decision made after a contested hearing.

Whether contact actually happens, however, may be another matter. As reported in chapter 1, 30 of the sample applications made by non-resident parents (10% of 289) were brought, at least in part, to give effect to orders or agreements made in previous proceedings, of which 10 were asking for a penal notice. Moreover, of all the cases which had concluded by the end of our data collection period 18 (of 292; 6%) were known to have returned to court because of the resident parent's non-compliance with the order or agreement made in the proceedings. In one case both situations applied.

Of course, since the interval between the end of the proceedings and the point at which we examined the files varied, this 'return' rate is probably an under-estimate. Moreover some non-resident parents may be experiencing problems with the resident parent's compliance but decide not to bring the case back to court or even take legal advice. Certainly some of the solicitors we interviewed mentioned clients in this position. For instance:

> *It was really sad. An old client came a couple of weeks ago for another reason. We'd fought tooth and nail for four years, everything was thrown at us, sexual abuse allegations, neglect, you're not committed. And we got contact. Mother then moved away, never turned up and by then he'd lost the will and never came back to enforce the order. I said to him it doesn't have to be that way, come back and I'll take it forward. But he hasn't come back*.

> *There was one particular case where we did take enforcement proceedings and mother started playing ball. But the client has got back in touch with me about another matter and I know contact isn't happening, so although mother started to comply when we took the proceedings she's not now. But I think he's just given up and thought 'it's such a battle'.*

On the whole, however, while solicitors highlighted the existence of the problem, if they made any reference to scale it was to indicate that it applied to a relatively small group of cases:

> *I don't think (non-compliance) is an enormous problem. I still think the rule of law in this country is... .People are still relatively unhappy at breaking what they think of as a court order. But there are brazen people who don't care and get the idea that if they don't comply with it not a lot's going to happen anyway.*

> *It's not a massive problem, though we always have a few in the firm. The ones where resident parents flatly refuse are the easiest to deal with, you take those back to court. The stop-starters more difficult, there's a string of excuses but some of them might be reasons and you don't want to look a prat in court.*

> *It's one thing to get a contact order, it's quite another to make sure the terms of the order are observed. It's my experience there are some cases where, say, the mother has residence, she will tend to find some excuse to hinder contact and that sort of thing. Not in many cases but in some.*

The ability of the courts to deal with this issue effectively, however, was said to be a major source of dissatisfaction for non-resident parents and a matter of concern to the lawyers representing them:

> *The enforcement side is dreadful. There is a general perception among non-resident parents that 'this isn't worth the paper it's written on'.*
>
> *We are supposed to have a system where ultimately a parent who has physical possession of the child can be sent to prison but of course it very rarely happens and my experience is that a lot of non-resident parents go to court, get themselves an order, mum doesn't comply with the order, they come back to court to try and enforce it, and eventually they give up.*

Various criticisms were levelled. Some cited variation in the way the issue was tackled, whether between the family proceedings court and the county court, or between individual members of the judiciary.

> *I think the county court is better than the FPC. I tend to think the magistrates' court let things drift a bit. I think the county courts are as hard as they can be with what they have available to them.*
>
> *The court's approach varies. Some will give them a talking to. But they're not all like that. I had one case where mother was refusing to let the child go for as much contact as had been ordered. But she hadn't applied to vary. The judge said it was too much and started negotiating with the mother. I thought it was appalling that a judge was prepared to ignore another judge's order. If the judge is robust the resident parent will often comply.*

Others made more general statements about the courts being unwilling to exercise their existing powers to enforce contact:

> *You do feel that in certain circumstances the courts are timorous. I don't think the courts feel that they have the power to do anything about a mother (who fails to comply). There are a lot of fathers being advised just to give up if the mother has remained completely and implacably hostile.*
>
> *I have one case at the moment where the court needs to bite the bullet and put a penal notice on – 'thou shalt do this Mrs X'. But the court doesn't like doing it. The trouble is the court doesn't like saying you're out of order and you need to face up to reality and have a more reasonable approach. In the years we were before the court it didn't matter what they said to this mother it never happened. I think they could probably have taken a stronger stance with mother. There was no prison mentioned, no fine mentioned, they said it wouldn't be realistic to change residence. There was nothing really said to mother that was strong enough for her to do anything.*

Thus penal notices, it was said, were rarely made and not that frequently threatened, while fines and committal were virtually unheard of, though all three could be effective on occasion:

> *Penal notices. I think sometimes they are not robust enough on that. They could be imposed more, they are a threat. And it may be sufficient for a parent to realise that they've got to take it in hand and they've got to encourage their child to have contact and they've got to also comply with the*

*court orders. I had this case where I asked for a penal notice; it's been going on for 10 years- and still the court wouldn't do it.*

*I've never seen any court fine anybody. There was a phase a few years ago where (X) court sent the odd mother to prison but I think the general accepted position at the moment is that they won't do it.*

*The best way I've ever seen a contact order enforced was where the magistrates fined the mum by mistake, because they thought that they could. And I was acting for the mum and we appealed it, and we were successful on appeal, but that's the only time I saw that mum, I know it's my client, discuss contact sensibly, because she'd lost money.*

*I'm not the sort of person who would be saying mum should be sent to prison, but on the one occasion that a mum did she purged her contempt and within a couple of days she was out of prison and contact worked from then on.*

Changing residence was also seen to be fairly unusual, although some lawyers reported that courts seemed to be more willing now to do it. A few also thought that the courts had recently become more robust in their approach to enforcement and suggested that this was in part attributable to the use of separate representation for the child:

*I think the courts have got tougher lately though, residence being awarded to the non-resident parent if the resident parent refused to co-operate with the contact order. And sometimes the threat of a section 37 report to buck up the resident parent's ideas. So I think we are getting there.*

*I think that what has occurred historically is that judges became frustrated about those options which were available to them and the involvement of guardians ad litem has allowed someone to represent the children more freely than was previously possible. And I think that has had an impact … It has given judges, in a way, backing, I think, to say that to take a bolder step can be in the child's interests. Because otherwise it was only perhaps a few judges who were willing to look at penal notices or a change of residence, whereas I think there is now an emergence of expert evidence which will support that.*

The strongest theme in the solicitor interviews, however, which echoed the comments of the judiciary reported earlier in the section dealing with the wider issue of implacable hostility, was a widespread recognition that the powers available to the court for dealing with non-compliance were of limited utility, being either impracticable, counter-productive or likely to have adverse effects on the child:

*She hasn't got two beans to rub together so a fine's impractical. Of course he doesn't want to send her to prison, it's the last thing he wants.*

*A financial penalty affects the child. Committal affects the child. I do wonder whether the suggestion that they might transfer residence might help, but having said that I'm not sure that would help either, because if that destabilises the child, their home life, what they're used to, their schooling, their friends...?*

*A lot of fathers don't actually want the day to day care of the children so if your only sanction is you lose the children, how many fathers actually want it?*

> *There are some out there, my client today would gladly take the children. A lot of them I don't think would cope, so you have a toothless regime out there.*

Hence there was a general view that 'something' needed to be done, even if only a few of the solicitors were able to come up with ideas for what that 'something' should be. These ranged from compulsory mediation and referral to therapy to withdrawal of public funding or financial penalties for making unfounded allegations. One solicitor also emphasised that the key thing was getting the case back before the court quickly.

## Enforcement in the sample cases

To what extent does our file data support the concerns expressed about the court's ineffectiveness in dealing with non-compliance?

As reported in chapter 3, of the 30 non-resident parents whose application was brought, at least in part, to give effect to a previous order or agreement there were three in which either the details of the previous contact or that expected to take place were not known and one in which the non-resident parent sadly died in the course of the proceedings. Of the remaining 26:

- 8 were entirely successful in getting the terms of the original order or agreement reinstated or improved on, and, where sought, obtaining a penal notice;
- 4 got the order confirmed though they did not manage to get a penal notice attached;
- 14 did not succeed in any respect, with 10 getting no face to face contact, two getting the amount of staying contact reduced and two getting defined orders changed to either reasonable contact or as and when the child wanted contact.

On the face of it this might suggest a fairly poor success rate: less than half (46%) getting the order reinstated; less than a third (31%) also getting a penal notice endorsed on the order. There were no changes of residence, no committals to prison and only one fine.

Careful analysis of the details of the cases, however, reveals a far more complex picture than the court failing to get to grips with resident parents wilfully defying court orders.

In the first place very few of the 'enforcement' cases fitted the pattern of a court order or agreement being made and the resident parent never complying with the arrangements. We found only one case in which there had never been any contact since the order was made[39] and two in which the arrangements had never been fully complied with[40].

There were additionally six in which the arrangements set up in the court proceedings had completely and rapidly collapsed (ie within a few months)[41] and a further three in which, although some contact was still taking place, this was not in

[39] Case 340, described in an earlier chapter.
[40] Cases 909 and 407, described earlier.
[41] See for example cases 325 and 1033, previously described

full compliance with the order[42]. In all the remaining cases the arrangements appeared to have more or less held for a considerable time before some kind of crisis point was reached when, typically, all contact ceased[43].

**Table 10.2: Enforcement cases: welfare concerns, and the position of the resident parent and child on contact.**

| | Child's position re contact | | | |
|---|---|---|---|---|
| | Opposed | | Not opposed | |
| Welfare concerns and initial position of resident parent | No. | % of all enforcement cases | No. | % of all enforcement cases |
| *Serious welfare concerns* | | | | |
| Opposed any/unsupervised contact | 8 | 27 | 4 | 13 |
| Not opposed | 3 | 10 | 2 | 7 |
| | | | | |
| *No serious welfare concerns* | | | | |
| Opposed, any/unsupervised contact | 3 | 10 | 1 | 3 |
| Not opposed | 3 | 10 | 6 | 20 |

(N=30)

Secondly, although the circumstances in the 30 cases were very varied, two factors linked most of them: either the resident parent was voicing serious welfare concerns about the non-resident parent (17 cases) or the child was said to be objecting to contact (17) while in 11 cases both obtained (table 10.2). There were only seven cases in which neither of these applied, in one of which[44] the child had been refusing some, but not all contact.

Sixteen resident parents were objecting to any direct/unsupervised contact, 12 because of serious welfare concerns (alleged child abuse or neglect (8); domestic violence (6); drug abuse (3), psychiatric illness (3) fear of abduction (3) and alcohol abuse (2), with eight involving more than one issue[45].

In all but one of the remaining four cases the resident parent's objections seemed to be based on the child's perceived wishes.

> There was very little documentation on file about this case which settled in the course of the welfare report being prepared. There had been at least two previous sets of proceedings, in the second of which, some four years previously, an order had been made for the child, who was then two, to see her father at a contact centre once every three months. At this point mother and child were living outside England but in another part of the UK and the order was made in that jurisdiction. According to the applicant father the order was later varied to allow for contact away from the contact centre although it was not clear if this was informally, or through further court proceedings. Mother and child then moved back to England, after which,

[42] eg case 417, described earlier.
[43] See, for example, cases 338; 343; 352; 354; 408; 413; 706; 707; and 902, described earlier.
[44] Case 707, described earlier)
[45] Most of these cases have been described in previous chapters, viz: 316; 340; 343; 354; 408; 413; 417; 706; and 1033.

> about a year after the original proceedings, father said mother stopped all contact. Father's application stated that mother had accused him of harassment, which he denied, and that he had been unable to bring proceedings until now.

The 17 index children who were said to be resistant to contact ranged in age from six to 15, although all but seven were under 10. Indeed five of the six children who were said to be opposed to contact although the resident parent was not, at least ostensibly, objecting, were under 10. The reasons given for opposition in this latter group were very varied. Two children had refused to go to contact after the non-resident parent had struck them[46]. One child[47] became worried about staying with his father after being diagnosed with epilepsy and the situation deteriorated because the parents were unable to work together to deal with his understandable fears. Two children seem to have decided they could no longer cope with parental conflict[48]. In the remaining case[49], however, which we earlier described as one of the most blatant examples of defiance of a court order in the sample, although the children may well have been voicing reluctance by the time contact broke down, it seems likely that this was due, in no small part, to mother's previous hostility.

The third factor which undermines the argument that the courts in the sample cases simply failed to get to grips with unreasonably non-compliant resident parents relates to the reasons why non-resident parents did not get the orders enforced. As noted earlier, 10 of these 'failed' cases ended with no direct contact. In every single one of them the index child had opposed contact and there were only two in which the resident parent had not expressed serious welfare concerns. We examined these cases closely in chapters 4 and 5.

In relation to the four which ended in no contact at all[50] we concluded that:

> In our view none of these four cases could be interpreted by any stretch of the imagination as examples of the court failing to deal robustly with a resident parent who was wilfully and unreasonably flouting a court order. Indeed in one it could be easily argued that the initial consent order for unsupervised contact, which father was seeking to make effective, was unsafe and the process, which had involved neither a finding of fact hearing nor a welfare report, flawed, given that not only was there a considerable history of domestic violence but both the child and the mother had been assaulted in the course of the proceedings.
>
> In three of the cases contact had stopped because of significant problems in the relationship between the child and the non-resident parent which appear to have been at least partly attributable to the ill-advised behaviour of that parent and in the fourth it was father's decision not to accept a period of supported contact at a contact centre and move away which meant there would be no contact. In each case the court sought to investigate the reasons for the children's resistance rather than simply accepting it and in three they were successful in getting contact restarted, at least for a period. It is hard to think of anything more the court could or should have done.

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[46] One of these, case 338, has been described earlier.
[47] Case 325
[48] Eg case 352
[49] Case 909
[50] Cases 325; 354; 417; 902, chapter 4.

Similarly, of the six cases which ended in only indirect contact[51], we were unable to find one in which, in our view, it could be argued that the court took an insufficiently robust attitude to compliance with the order. Four involved serious welfare concerns and four children steadfastly opposed to contact. Again the court did not take the children's views at face value.

Two of the remaining four cases in which non-resident parents did not succeed in getting the order enforced also involved children who had resisted contact. In one of these[52] it seemed to be a fairly temporary response to acute parental conflict and although the previous defined order was replaced with an order for 'reasonable contact' this was in line with the boy's wishes. The other case was interesting because only one child in the family was resistant to contact, the other was going along quite happily.

Case 435. The index child was 9 and along with her sister (12) had lived with father since the parents had separated, very acrimoniously, when she was five. There were also two older half-siblings (mother's children by a previous relationship) who had remained with father but moved out to live with mother after a row with father, 9 months before proceedings began. There had been no contact with mother (for reasons which were disputed) for the first year. Father brought proceedings for a residence order in the course of which staying contact on alternate weekends were agreed. This seems to have worked reasonably well for a couple of years, although the child was always less interested in seeing her mother than her sibling was. At the point the older children left home, after a row with father, she became increasingly reluctant. Mother brought the proceedings because she did not feel that father was doing enough to encourage the child.

At the first hearing the arrangements previously in force were agreed and a welfare report ordered to explore the reasons for the child's reluctance. The child went for contact but refused to stay. She became very upset at the prospect of seeing the Cafcass officer and told her teachers that she was afraid she would be taken away from father. The Cafcass officer, who said she was '*unable to get to the bottom of the child's feelings'*, did not think the father was actively discouraging the child but considered he needed to do more to encourage her. She suggested that the parents made use of mediation service which provided facilities for children to be involved and that in the meantime the relationship between mother and child be sustained by meeting up at the maternal grandparents once a month. Mother then ceased to take part in proceedings. It was unclear what would happen about contact.

This was a very sad case. Had mother pressed on with her application, and both parents and child been prepared to take part in some therapeutic work, it is possible that the child could have been helped to deal with her fears. However it is doubtful that there was any mileage in the court taking a more 'robust' approach.

Indeed we found only two cases, of the 14 'unsuccessful' non-compliance cases, in which we think it could possibly be argued that the court needed to take a firmer approach. One of these (case 1033) was described in an earlier chapter. The second is set out below.

Case 401. The parents had never lived together and their relationship ended before the child was born. The first set of proceedings, brought when the child was only a

[51] Case 318; 338; 340; 343; 408; 413; chapter 5.
[52] Case 352, described previously

few weeks old, ended 14 months later with a consent order for visiting contact 3 times a week. Within 3 months mother had stopped contact and 5 months later father brought the matter back to court seeking a) to enforce the original order and b) to extend it to include staying contact.

At the first hearing contact was re-started, by agreement, as before but supervised by mother. The reasons mother put forward for insisting on this were various: father might kidnap the child; he would not be able to care for her properly; he would lose interest in the child since he had not previously shown commitment to contact, had never paid child support and was only pursuing contact in order to get back at her. The court ordered a welfare report on whether and when supervision should cease.

Supervised contact at mother's house was not satisfactory for anyone. The Cafcass officer referred the matter back to the judge and one period of contact was moved to be at maternal grandmother's. Problems continued and there was a row after father smacked the child. Mother applied for contact to be stopped saying that the stress was affecting her health. She was by this time expecting another child. The court suspended the order and ordered contact to be observed by Cafcass. Mother refused to let the officer collect the child because father was in the car with her.

At the next hearing father (and the court) accepted mother's offer of a series of contact sessions at a neutral venue, supervised by maternal grandmother, some of these to be observed by Cafcass. Only some of these were achieved, a variety of 'reasons' for cancellation being offered. After two months of this the Cafcass officer recommended that unsupervised contact should start immediately, moving on to staying and that if this could not be agreed the matter should be listed for a final hearing. Mother initially held out then offered weekly visiting contact for 6 hours. A consent order was made in those terms and the case listed for review. Three months later the case concluded with an agreed order for 'reasonable contact'. It was noted that contact was 'going well'.

So after another 14 months before the courts, although father succeeded in getting unsupervised contact restored he finished up with less frequent contact and an overall shorter period of contact than he had achieved in the previous proceedings and made no progress at all towards staying contact.

There were three welfare reports in this case, all in father's favour and increasingly critical of mother. (Indeed mother made a formal complaint that the officer was biased against her and requested a change). While recognising that mother had some grounds for concern about father's behaviour the officer took the view that these were insufficient to deny contact, that father had shown an understanding of the child's needs and an ability to meet them and that continued supervision was unnecessary, sustainable and not conducive to the development of the child's relationship with her father. For example:

> *There are no compelling reasons to refuse contact. I do not think mother's fears of abduction have any substance. Mother says that any contact with father affects her emotional health and her capacity to parent this child and the expected child. I do not think there is sufficient evidence that her parenting capacity would be affected to a degree that would place the children at risk.*
>
> *For far too long contact has taken place in situations which make it impossible for the relationship between the child and her father to be properly nurtured and for the child to fully benefit from the love, attention and experiences her*

*father wishes and is capable of offering her. Mother says she would be able to sit in a room and play with a child for 5 hours. I do not think it is realistic to expect any adult to engage a child for this length of time in these circumstances. The child has a right and a need to have a relationship with her father and paternal family. I do not think mother has given much consideration to the long term implication for the child if contact ceases at an age when she will have little memory of him.*

## Are non-resident parents treated unfairly by the courts? The views of family lawyers.

In the preceding sections of this chapter we have argued that there can be no doubt that the courts hearing contact applications start from the position that unless there are very good reasons to the contrary contact between a child and their non-resident parent should be promoted. They also make considerable efforts to make that a reality. While they are not always successful in the majority of cases they are. In most of our cases where the outcome was no face to face contact there were either very good reasons for this or the non-resident parent opted out of the proceedings without giving them a proper chance. There are a small proportion of cases which end in no direct contact where this is not the case, but usually the courts will have made considerable efforts to reach a more satisfactory conclusion and will be very loath to give up the attempt. Yet there appears to be a perception that non-resident parents do not get a fair deal from the courts.

One of the first questions we asked our solicitor interviewees was whether they thought there was *any* justification for this. The general consensus seemed to be that a) the courts and Cafcass are most definitely not biased against non-resident parents in terms of contact and b) that people generally get a fair deal but that c) resident parents start off from a position of strength and it is too easy for them to manipulate the system and spin things out; d) the whole process takes too long and some parents give up; e) some resident parents and children remain persistently opposed to contact and the court's abilities to deal with this are limited and f) at the end of the day the court has to act in the interests of the children and sometimes that means the non-resident parent may lose out.

In responding to the question interviewees varied in the emphasis they put on each of these elements and whether they highlighted the positive side of the picture - the majority who get 'a reasonable deal' - ; the negative - the minority who end up with an outcome which is 'unfair' – or aspects of the process which make it an uphill struggle for non-resident parents, even though they may be successful in the end. Indeed there were some who did not see there was any validity to the perceptions at all:

> *No, I don't (think there is any justification). I think that the courts have to bear in mind the needs of the child and each individual case is dependent on certain individuals involved. Sometimes more contact is ordered or more contact is agreed but sometimes there shouldn't be any contact or there should be supervised contact. It just depends on each case. The problem is that only the bad ones get reported.*
>
> *There may well be that perception that the court is anti the non-resident parent but that isn't the reality. It may be that I just haven't had any cases that have gone that way but that certainly isn't the way I see it and it's not how I advise clients.*

> *They seem to think the contact, you know, 'I'm not going to get any contact', whereas in fact, to my knowledge the reverse is true.*

Most of the others, however, indicated that there were some reasons for non-resident parents to feel aggrieved.

### It is too easy for resident parents to 'play the system'

> *I think a resident parent can make the situation very difficult and I don't think that's the fault of the Children Act, it's not the fault of the judiciary. If they are determined to frustrate the process the process allows them to do so. It's just about the ability to play the system. I don't think there's anything wrong with the Children Act, I think it's a great piece of legislation, but the system allows it to be frustrated.* (Solicitor)

One of the strong themes to emerge from the interview data was the perception that the resident parent starts off from a position of power, which some seek to exploit:

> *I don't think they get a rough deal from the courts, I think they probably get a rough deal from the other parent.*
>
> *There is a perception that whoever gets residence is the one who is in control. But once you get into the court system that isn't right. I do think you get a fair assessment but it's the delay. The court system is very slow and so the perception becomes even bigger in the non-resident parent's head that 'she's calling the shots'.*

In the main, as this last quote suggests, our solicitor interviewees saw the court process acting as a counterbalance to this inherent advantage. But it was said, there are many ways in which resident parents can frustrate the process by throwing spanners in the works, from not co-operating with the process - evading service or even disappearing; not turning up to court or coming up with plausible reasons for not being able to do so –through making allegations, or even sequential allegations, which have to be investigated, to coming up with a string of excuses for not complying with interim orders.

One solicitor gave an example of a case where, in his view, the non-resident parent had not had a fair deal, whether or not, at the end of proceedings he would, or should, have contact:

> *I've recently taken over a case. It's been in litigation now for three years. The little boy is only four and father has not had contact since the day they separated. For a substantial period of time mother evaded service, didn't turn up at court. The first couple of times she got away with it, and then it was a matter of proving service, then attaching a penal notice. All those things take time, six to eight weeks depending on which court you're in, and then still not getting mum at court and thinking what do we do now? Then mum turns up at court and says domestic violence and the Cafcass officer says we'll have to have a finding of fact hearing, and then you have to timetable the evidence to be filed and have to get a court hearing, then we have to get the police records.*

> *We had a hearing set up two weeks ago, she then filed a very flimsy statement and it then came out that a big chunk of their time had been spent in (X town) so although we had police records from (Y) we actually need them from (X). This week (December) I got a FAX from the court asking for availability in the six months beginning February. Findings may be made but I don't think they'll be significant enough to say no contact, ever, but then there'll be a significant period of time for Cafcass to report based on the findings that have been made. So the poor guy has gone three years, and he will say they're three really important years and the rate we're going the child will probably be five or six before he gets to see him. That really is mum being allowed to frustrate the system. And all this time I've got nothing to give this guy. Mum wouldn't agree anything. And the Cafcass officer was saying we need a finding of fact hearing so without her support I'm not going to get anything. What do the courts do? They've got a mother alleging serious domestic violence. Case law says you've got to hear about that and make findings. So their hands are tied by the system.*

These tactics all present the court with challenges, not least because it will rarely be immediately apparent that tactics are all that they are.

Due process requires that the respondent to the application be properly served with the court papers and there are genuine circumstances where this has not occurred. People are sometimes not properly informed of court dates or not given enough notice. Certainly there were examples of all these in our sample. People do have other commitments that cannot be altered; parents with young children do have problems arranging child care. The court will usually want to give resident parents the benefit of the doubt, at least to start with (as they do with non-resident parents who do not cooperate). At some point, depending probably on how subtle or persistently uncooperative the resident parent has been, the court will take some action: make an order, for example, for the Benefits Agency or the Revenue to disclose a parent's address, or make a penal notice requiring attendance. Again, there were examples of these in our sample. But by the time this minimal level of co-operation has been achieved some considerable time will have elapsed; there has been no contact and the relationship between the child and the non-resident parent may have weakened or any hostility become more entrenched.

The issue for the courts, then, is to identify, at the earliest possible stage, a parent who is seeking to avoid coming to court and take prompt action. While this did not seem to be a major problem in our sample, we have highlighted a few cases where, in our opinion, the case was allowed to drift.

Where allegations of serious welfare concerns are made, as they were in so many of our sample cases, they have to be investigated. As noted in earlier chapters the court will usually try to get some form of contact going in the early stages of the case, typically on a supervised basis, which may be better than nothing but is not conducive to normal parent-child interaction and which some non-resident parents will not accept. Where the resident parent refuses even this, despite attempts at persuasion, then there can no contact before the situation is looked into, typically by means of a report from Cafcass, which, as noted in chapter 9, can take several months. The alternative is an interim hearing. But pressure on court time, we were told, means that these are difficult to get; time will have to be allowed for both sides to prepare statements and/or schedules of contested facts, and even if the result favours the non-resident parent this may not immediately resolve the issue of whether there should be contact or assist in getting it restarted. Again, as time goes

on any relationship between the child and the non-resident parent is likely to weaken and the child's anxieties or resistance to re-establishing contact grow.

> *If a mum turns up at court and says at the first directions, no, I don't agree the principle of contact, as the lawyer acting for dad that's really difficult because if you can't agree anything in the interim you have to go for a Cafcass report. At the moment the referral times are 12 weeks. You try saying to a client you're not going to get any contact while this is investigated by an independent person. Immediately you've got that frustration. The option then is to apply for an interim hearing but that's frustrated by lack of hearing dates and also by virtue of the fact that what does the judge do, we get to week six, half way through a Cafcass report, what does the Cafcass officer say? 'Nothing yet'. As they rightly should do, because there are cases where a parent has a genuine concern about contact, but for the non-resident parent that is extremely frustrating because the other parent's view takes precedence.*

> *A resident parent can make allegations which the court is duty bound to investigate but timescales for the courts, getting hearings and things like that are often lengthy and if there has to be disclosure by the police, it's going to take more time. While it's being investigated the allegations often – not always – worsen as the case goes on. I fully appreciate if a mother has been subject to domestic violence then it may take a long time for that to come out and I am sympathetic to that but at the same time in my experience the allegations get more and more and more heinous as the case continues, not necessarily with any finding. I think the court, if it appears it's going to be an issue then it needs to be flagged up and dealt with very early in the proceedings. There's little bits the mother or father will say but they're not really ever dealt with. 'Nail colours to the mast' is what I think I'm saying, at an early stage. If the court hasn't got a handle on it early on, then it can continue for a long time.*

Thus the issue for the courts is how quickly they can separate out the cases where there are genuine grounds for concern from the ones where allegations are being fabricated or exaggerated. Speed is of the essence, but, as we have noted in chapter 9, this is not a word one readily associates with the courts. Finding of fact hearings were introduced as a means of trying to tackle these issues, but as we also reported in chapter 9, are actually quite rare, and as one of the solicitors we interviewed described, games can be played with them:

> *I have a case where mother and her family are clearly determined to play games left, right and centre. There were very strong allegations made against my client, who is not a saint but was adamant that he had not done what he was accused of doing. I suggested a finding of fact hearing to try and sort it out. A week before the finding of fact hearing was listed, mother's solicitors wrote to the court, without any prior consultation with me, saying the hearing wasn't needed because they weren't pursuing the allegations. They then turn up at court, which had been down-listed to a directions hearing. I had prepared a schedule of facts for agreement, they said they wouldn't agree it and wanted to put forward their own. We now have a finding of fact hearing, the one that could have taken place at the beginning of September, listed for the end of November. In the meantime, my client, who is on benefits, is travelling from (X) to (Y) one week and to (Z) another, because contact centres only operate on a fortnightly basis, to see his child and there is very little the court can do about it. Because mother is pursuing these*

*allegations and clearly the court has to get to the bottom of it because it has to protect the child. My client accepts it. But it is playing the system. It is spinning it out. Nine times out of ten it is in the hope that fathers will give up.*

## Proceedings take too long

The second strong theme in our solicitor interviews was that even if the resident parent is not 'playing games' or the non-resident parent eventually gets what s/he originally wanted, they get very frustrated because the whole process is so lengthy. Some of this was said to be a matter of parents not understanding or accepting the procedures which have to be followed and inevitably take time. But, as we reported in chapter 9, there was also a very clear perception that the whole process needs to be significantly speeded up. First hearings need to be quicker; Cafcass reports produced much more speedily; interim hearings more readily available; final hearings not have to be listed months ahead. Cases where there is no contact at the outset of proceedings and the resident parent or the child are refusing even supervised contact need to be fast-tracked.

*I don't actually think it is unfair (in terms of bias). I think it is unfair in terms of the delay and the process whereby unless the resident parent agrees then there is a standstill.*

*I think that is one thing that has really got to be fast-tracked. I know it's a principle under the Children Act that it should be dealt with as quickly as possible but truly fast-tracked, it should be done within weeks rather than months. And you should have a final hearing within ten weeks.*

Delay makes the process of re-establishing contact more difficult or perhaps even impossible, is a factor in non-resident parents giving up and exacerbates their perceptions that the system is against them. Addressing the issue of unnecessary delay, therefore, which is essential anyway in the interests of children, might also go some way to making non-resident parents feel less aggrieved.

Lengthy proceedings were also seen to magnify the effect of any imbalance in the ability of the parties to pay the costs, and as we discussed earlier in this chapter, where the imbalance is weighted against the non-resident parent, may lead to them withdrawing their application, again fuelling perceptions that the system is unfair. In an ideal world one would wish to see a more level playing field. However in a climate where the focus is on trying to reduce the outlay on legal aid it would clearly be pointless to recommend anything on these lines.

## The court is ultimately impotent in the face of implacable hostility on the part of either resident parents or children and non-compliance with court orders

*It's the inability of the court to cope with the attitude of the resident parent. My most recent is with a very hostile mother who will not allow contact and contact has not taken place for a number of years, and I do feel the court system has let father down. It's been through the courts for about five years*.

*I have had cases where the non-resident parent has walked away with either no contact or very little contact (because of the child's resistance). So yes, in some circumstances they do tend to get a raw deal. But in the majority of those cases there is little else that the judge could have done.*

The dilemmas the courts face presented with resident parents or children who are totally and immovably resistant to contact have been discussed at length earlier in this chapter. Our solicitor interviewees saw such cases as a significant factor in non-resident parents' feelings that they did not get a fair deal from the courts.

All those interviewed had come across cases where children were adamantly refusing to have contact where there appeared to be no sufficient reason for this in the behaviour of the non-resident parent. Most had also encountered cases where that parent ended up getting no contact, although this was not common.

> *They're really, really difficult, they are absolutely the worst. Generally you would get a 9.5 in those ones. They're the ones that take five years and are very frustrating and sometimes you might not even get it to break at the end of it. Sometimes you have to advise people to give up. You can say to them, you've got a huge file here that proves how much you were committed to your child, so if your child turns up at 16 and says where were you, you can say I was here but I hit a brick wall.*
>
> Researcher: *So there are some, where at the end of the day...?*
>
> *Where it ends in nothing? Yes*
>
> Researcher: *Are there lots of those*?
>
> *No, they're an absolute minority.*

Courts were also seen to try to investigate why the children felt this way and what might be done about it, not just to accept the situation at face value:

> *Cafcass officers see the children and they don't automatically take it, they do delve a bit further and will say that well I know this is what the child is saying but I actually think, in the long run, this is what is going to be best. So just because a child is saying it, it isn't automatically taken as read.*
>
> *In the case I mentioned the Judge tried to take a robust approach, ordered a psychological assessment; said that it should be adults who took the decisions, not the children. The court tried and tried, the psychologist tried to set up meetings, but the children remained opposed.*

A few respondents, however, questioned whether more could be done, suggesting that earlier, more intensive or more dramatic intervention might reduce the number of cases reaching this point:

> *With children who are expressing strong wishes and feelings I think even more work needs to be done with them to get to the bottom of why. I had this case, two girls aged six and eight. The parents had been essentially sharing care, father four days a week, mother three. Then they had a gi-normous row and dad stopped contact and the girls - it was dreadful – they said to Cafcass they didn't want to see their mum. The Cafcass officer was also a children's guardian. She did things like handovers, she met the children over and over, she made them meet with mum, she observed the children behaving completely differently in front of their mother from in front of their father. She did this over and above and it was a very unusual report we had from her because she had her guardian hat on. It was successful, she got contact for*

*mum again. That's the level of work that needs to be done. But that's a resource issue.*

*.*

*They get spoken to quite late on in the process. So the children can be left with no contact for a long time and the longer they don't see a person the easier it becomes to stay in the entrenched position of 'I don't want to see him'. Because they don't remember what it is like to see him and they are with the resident parent who is very upset and inevitably even if they're not talking about it directly to the children their views are being felt. It would be helpful, like we have our harm report done straightaway in domestic violence allegations, if we could do a similar immediate interview with the children, not to necessarily ask them what they want but to reassure them that their views are going to be heard and even though they have got strong views now about the parents not to worry, that they will be listened to. And then work with the parents and explain how important it is that they are listened to. How you get them in there quick enough is a different story.*

*I've got one now where there had been no contact in the two years since the separation. It's a rule 9.5 one. One psychiatrist said that contact needed to go at the children's pace but we had a second one who said 'these children need to spend time with their father and see what happens'. That effectively broke the deadlock. The mother objects to it every single time and I get two or three letters a week about the horrificness of the contact and how abusive it is for the children, but the guardian is very much 'No, these children enjoy this contact!' So he has weekends Friday to Monday every other weekend and he's had some holiday contact, limited at the moment, but the idea is that it will go up. So in that case the outcome has been ultimately very positive. So that one, from a starting point of these children running out of contact centres refusing to see their father has actually had quite a positive outcome.*

If children remain resistant however, solicitors acknowledged that the court, and/or the non-resident parent would have to bow to the inevitable. Because the bottom line is, as one solicitor put it:

*The court will do is what is in the best interests of the children. And sometimes a harsh decision will be made and if it's best for the children it will be the non-resident parent who loses out. It's quite rare but it will happen.*

Another interviewee quoted a case in which this had happened, despite extensive intervention over a lengthy period:

*The child is 10 and there has been litigation for eight or nine years. We took the case over from another firm. You go through the process of having a children's guardian and a psychological assessment and you have (X contact agency) which is an organisation who are very good at dealing with these difficult cases. They said this child is being harmed by this process and we cannot continue to put him under this pressure. A senior judge said enough is enough, I'm stopping this, it's abusive to the child, I'm going to make no order for contact, there's to be indirect contact twice a year by letter and cards and that's it. Father sought leave to appeal, that was refused, and then of course his funding was stopped.*

*There is no apparent reason why this child should not have contact. There is nothing that the father has done or is doing. The relationship between the adults is very fraught, with allegations of domestic violence and all sorts of*

*things, but there is no real reason why he should not see his father. The child is now saying he won't even contemplate talking about his father and he is effectively psychologically damaged by the process.*

*And it really doesn't matter whether it's mother's fault, I think it may well be, I can't see that she is blameless in all this, it probably is her fault that the child is in this position, but now it's got so far that the child is suffering harm. The harm he suffers by not seeing his father is nowhere near as bad as the harm he is suffering by being asked questions all the time about why you don't want to see your father.*

## Would a statutory presumption of contact help?

At the beginning of this chapter we reported universal agreement among all our interviewees, including those who thought that there were occasions on which non-resident parents got a raw deal from the courts in terms of the outcome of the proceedings, that the courts operated on an effective presumption that there should be contact unless there were very good reasons to the contrary. Hence introducing a legal presumption of contact was unnecessary in terms of affecting the approach taken by the courts:

*It's not actually in the legislation that there is a presumption of reasonable contact but I feel that is the way the court look at it. I feel the court try to find any way to make sure that the child should have contact.* (Solicitor)

*Although in the law there's no statutory presumption of contact there is a strong presumption in case law so we operate under that anyway. I don't think a statutory presumption would make that much difference given the powerful lead of case law.* (Cafcass officer).

Interestingly, however, some interviewees were of the opinion that a legal presumption could be of some value in the impact it might have on the attitudes and behaviour of resident parents. This was a particularly noticeable strand in our interviews with the judiciary, particularly since we did not specifically ask them whether they thought there should be a legal presumption.

Those who argued for such a presumption saw it operating in three main ways. First, in changing the culture in the separating population. Currently, it was said, the courts and associated professionals know that the courts operate an effective presumption, but parents probably do not. Whereas the news that the law had been changed to incorporate a presumption would very rapidly become common knowledge:

*Both parents don't automatically know (that the courts are pro-contact) and therefore if there is a separation very often the father, in particular, does not realise that he has a legal right to see the children. And contact is used, in any case, as a sort of weapon, and I think if it was more publicised that the father has a right, the mother has a right, they are equal then I think that would be far better from the child's point of view than two parents fighting.* (Judge)

*Once it had seeped into the consciousness of parents, when they are falling out and becoming very angry with each other and bitter, if that was lodged in their consciousness, I think that would help*. (Solicitor)

Hopefully, it was suggested, once this message had got across, resident parents would not see contact as a gift within their power to bestow or withhold; non-resident parents would feel empowered. Thus the inherent imbalance of power between the parents would be corrected and the resident parent deterred from using contact as a weapon:

> *I think there's a psychological barrier. What needs to be made clear is that whoever the child lives with has no better rights in relation to the child than the parents had when they were living together. So if the date of separation comes, the assumption ought to be that the rights of each parent that they enjoyed before separation are transferred over exactly the same. I don't think, psychologically, that is how most people view it. I think you have to get over the common misconception – I bet if you asked mothers how they looked at their position in terms of – ownership is too strong a word but in some ways parents do look at it that way – the mother who's got residence might say, ah well, the child resides with me, and what she really means is 'this child's mine'. It means that somehow the father hasn't got what he had before; it's that that's wrong.*
>
> *I think (a legal presumption) might level the playing field and might avoid a lot of the conflict that we get. Most parents when they separate are fairly reasonable, that's one of the refreshing parts about this aspect of law, it's not all doom and gloom. But there are those cases where you do get difficult breakdowns and from the children's perspective it's usually quite disastrous if they become the battleground between the parents. And so anything the law can achieve to prevent children becoming the pawn in the game they've got between each other I think is good for children.*

Second, in giving solicitors a stronger argument to use with parents who seemed unreasonably resistant to contact:

> *Then a solicitor could turn to the parent and say 'Look, this is the situation, there's a legal obligation on the court'. It may actually bring people to a level of co-operation.*
>
> *It may be that these things are all subtle and at the end of the day it's meaningless where a lawyer puts the burden of proof but I think psychologically if you're a lawyer giving advice to your client you're going to say look, there's a presumption here that your child is going to see his father, so we've got to work on that basis.*

Third, it might help the courts to get over to resident parents that contact was likely to be ordered:

> *There's an argument to say that if the principle was enshrined in statute or a practice direction or something it would have more force, it would be persuasive of those who are reluctant to engage. It might help to persuade the more intransigent mother if it were enshrined in statute. Because there's nothing, other than us saying that it's the guiding principle, but where does that come from apart from equality and trying to be fair to each gender?*
>
> *Yes, I think from our point of view it would be a good starting point to be able to say to a mother who is reluctant to allow contact that there is a presumption so there has to be a very good reason for contact not taking*

> *place. I start off anyway by telling the reluctant mother that it is in the case law that contact is not his right, contact is the child's right, so it's already there, it's enshrined in case law but if it was in statute or a practice direction it makes it that much more cogent.*

There was not, however, by any means a consensus on this, even among judges in the same court. This was particularly evident in some of the group interviews we conducted. Those who opposed a statutory presumption usually argued that a) it was not necessary and b) that it would undermine the core principle of the Children Act:

> *A statutory presumptions would make no difference whatsoever. Alright to a point a solicitor could say it's now in a statute, but there are mountains of case law out there that says contact should take place. In terms of case law there is a presumption of contact and having it in the body of statute would not affect it in the slightest.*
> *A presumption of contact wouldn't change attitudes and it would be wrong, contradict the Children Act principles, would distract from the principle of the paramountcy of the child's best interests. A legal presumption would have legal consequences, a presumption is something that is taken by the court to be true without legal proof.*

It was also suggested that a statutory presumption might give non-resident parents false expectations, and therefore increase the level of dissatisfaction, since even if there was a presumption it would have to be rebuttable and the court might still decide that contact, for whatever reason, was not in the child's interests. Interestingly, no-one suggested that a presumption might increase the risk of marginalising other issues, and some of the proponents of a presumption were confident that the legislation could be drafted in such a way as to guard against that possibility:

> *Provided that statutory presumption is framed in terms that enable the court to exercise its discretion in determining that there are good reasons to the contrary, I can see absolutely no difference so far as the court is concerned between what would happen then and what happens now*. (Judge)

> *I would have thought that it would be possible to frame legislation in which one of the situations in which the presumption of contact could be overturned would be when the court determines that there has been violence of such degree that it would be either unsafe to the mother or the children.*

> Researcher*: You feel you could protect against that?*

> *I think it could be easily protected.* (Judge)

## Summary

All those interviewed in the research considered that while there is no presumption of contact in the Children Act 1989, the courts operate on a *de facto* presumption that unless there are good reasons to the contrary there should be contact. Courts were also seen to try very hard to give effect to this; indeed, some interviewees considered that at times they tried too hard.

It was also acknowledged that these efforts are not always successful, even when the circumstances would not ordinarily result in contact being denied and when it might be in the child's long term best interests. This typically occurs where either the resident parent, or the child, or both are strongly resistant to contact and impervious to attempts to shift their position.

Many resident parents express a degree of hostility to contact at the outset of the proceedings although the reasons for this vary widely. In most instances the court process succeeds, not necessarily in dealing with the cause of the resident parent's hostility and therefore changing their attitudes, but at least in overcoming their initial resistance so that contact can take place. Persistent unreasonable hostility was generally seen by interviewees as quite unusual.

Where possible courts seek to overcome a resident parent's objections through encouragement and persuasion, but when these efforts are ineffective sterner methods come into play, including threats of the consequences of continued resistance. However it is unusual for sanctions to be actually employed and judicial interviews revealed a general reluctance to go down this road. Hence at the end of the day there are some cases in which the court may eventually, and very reluctantly, have to admit defeat. Many judicial interviewees saw the need for the court to have more realistic, appropriate and effective options to deal with such cases, which though uncommon, took up a great deal of court time and left them with a feeling of failure.

Children who steadfastly resist contact present the courts with an even more difficult challenge. It is quite common for children to be said to be opposed to contact at the outset of proceedings and interviewees perceived the reasons for this to be very varied. Where resistance is not seen to be well-founded the courts adopt a range of strategies to try to address the problem, but there are again some cases where they will have to call a halt to the process.

Very few of the (61) sample cases which ended with no direct contact expected to take place, for whatever reason, were adjudicated by the court (7). Twenty-four were formally withdrawn, 17 effectively abandoned; nine agreed and four not agreed but not formally contested.

Interviewees suggested four main reasons for non-resident parents not seeing the case through. Some may be unwilling to cooperate with the incremental process favoured by the court or decide that continuing the attempt to get contact is not in the child's interests. More commonly, particularly where proceedings have been prolonged, they reach a point where they feel they cannot continue the struggle. Indeed some may be financially unable to do so.

In view of the number of practitioners who said that the imbalance in public funding between resident and non-resident parents contributed to the latter's decision to give up we analysed the 39 cases which ended in no contact at all. In fact across the whole group the proportion of resident and non-resident parents who were a) legally represented and b) publicly funded was almost identical. A case by case comparison indicated seven cases in which there was clearly some inequity in terms of legal representation or public funding which could have worked against the non-resident parent and six in which the inequity was in the other direction. There were only two in which the imbalance clearly played a part in the non-resident parent's decision to give up.

Despite the existence of obstacles which can impede the court's attempts to establish face to face contact, most non-resident parents who go to court to seek contact actually get it. However this does not necessarily mean that once the proceedings are over, contact actually takes place.

The ability of the courts to deal with non-compliance, although not proportionately a large problem, was said to be a major source of dissatisfaction for non-resident parents and a matter of concern to the lawyers representing them. Although there was a degree of variation between courts and individual members of the judiciary, and a trend towards greater robustness, lawyers perceived courts to be generally reluctant to use the sanctions they currently had available. Like the judiciary, however, they also considered that the powers available to the court for dealing with non-compliance were of limited utility, being either impracticable, counter-productive or likely to have adverse effects on the child.

The outcomes in the non-compliance cases in our sample superficially support these concerns in that less than half (46%; 12 of 26 completed cases with data available); got the order reinstated, with only a third (31%) also getting the penal notice they had sought. There were no changes of residence, no committals to prison and only one fine.

Detailed analysis however, revealed a far more complex picture than the court failing to get to grips with resident parents wilfully defying court orders for no legitimate reason and there were only two in which, in the researchers' opinion, it could be argued that the court should have dealt more robustly with the case.

The responses of the solicitors interviewed to the question of whether there was any justification for the perception that non-resident parents get an unfair deal from the courts were then explored. The general consensus seemed to be that a) the courts and Cafcass are most definitely not biased against non-resident parents in terms of contact and b) that people generally get a fair deal but that c) resident parents start off from a position of strength and it is too easy for them to manipulate the system and spin things out; d) the whole process takes too long and some parents give up; e) some resident parents and children remain persistently opposed to contact and the court's abilities to deal with this are limited and f) at the end of the day the court has to act in the interests of the children and sometimes that means the non-resident parent may lose out.

Finally the chapter reported the views volunteered by some members of the judiciary that although a statutory presumption of contact was not necessary in order to influence the approach of the court, since the courts already started from that position, it could be useful in influencing the attitude of resident parents. This might prevent disputes arising in the first place, by changing the culture and redressing the inherent power imbalance between resident and non-resident parents. It could also assist solicitors and courts dealing with resident parents who were resisting contact for no good reason because they would be able to point to a piece of legislation rather than referring to the general approach of the court and case law. In contrast others strongly opposed the idea, on the grounds that it was unnecessary and would undermine the central principle of the Children Act, the paramountcy of the interests of the child. Since this question was not specifically put to our interviewees, we cannot say what the balance of opinion was.

# Chapter 11: Making the court process more effective

## Weaknesses in the current system

At various points in this report we have identified a number of deficiencies in the court process, either emerging from our analysis of the file data or mentioned by interviewees.

### Non-purposeful delay

Clearly this is a major issue. It was highlighted as a problem by almost all the solicitors we interviewed (chapter 9), seen as exacerbating the frustration of non-resident parents, and a factor in some deciding they could not continue the struggle (chapter 10). Where contact is not taking place at the start of the case and it is not possible to get it going again early, for whatever reason, the longer the case goes on the harder it will be for child and non-resident parent to re-establish their relationship. Delay also prolongs the stress of proceedings for children both directly and because of the effect on the resident parent (Buchanan et al, 2001), which cannot be in their best interests. While there are undoubtedly a myriad causes of delay in private law cases, just as there are in public law, and this study was not designed to investigate them, it is evident that key factors are a) lack of court time b) Cafcass taking too long to allocate cases and produce welfare reports; c) parents who do not cooperate fully with the court process and d) shortage of resources such as contact centres and assessment/therapeutic facilities.

Addressing these issues, particularly those which are directly within the control of the family justice system, is imperative.

### Problems with the enforcement of court orders

The difficulties of enforcing court orders, either in the course of a case, or as a response to breaches of final orders, has also been mentioned (chapter 10). While numerically this is a far less significant problem than delay, it is one that exercises all those involved in the system and again is a key source of frustration for non-resident parents. This issue was addressed comprehensively several years ago in a consultation by the Children Act Sub-Committee, leading to their report *Making Contact Work* (ABFL, 2002) and eventually to the provisions in the Children Act 2006 which amends the Children Act 1989 to provide the courts with greater powers to both facilitate and enforce contact. We asked our interviewees whether they thought these provisions would help.

It has to be said that not everyone was *au fait* with what these provisions were or whether they had yet been implemented. Of those who felt able to express a view opinion ranged widely from cautious optimism to scepticism, with most people simply wanting to reserve judgement and saying ‘possibly’. The most positive comments were about some form of parenting class which could be provided under the ‘contact activities’ umbrella:

> *Yes, actually, because it’s general ignorance and not being able to see past their own anger and emotions to the wider interests of the children that is generally the problem. So I would like to hope that education would help that.* (Solicitor)

> *I can certainly see the need in some cases to change those attitudes. Thinking about some of the people who appear before me, though... I had a mother last week in a case where she has been saying that the child doesn't want to see father. The child has been seen by Cafcass and a contact agency and it's abundantly obvious that the child does want to see father. Mother has remarried, she's got a family with the new husband; he is called dad by the child and they just want to blot out the biological parent. It will be interesting to see whether the mum in that case would consider attending those classes. And what do you do if she won't? I suppose it gives strength to the arm of enforcement. It reinforces the fact that this is an implacable case.* (Judge)

Of the other specific provisions only unpaid work and monitoring by Cafcass attracted any comment, in both cases with mixed responses:

Unpaid Work

> *If we had power to say that a mother who defiantly breached an order with no good reason, that we could say, right, the child will have contact with the father at 10 o'clock on Wednesday morning, and at that time you will go and do community service, and link them in. Something along those lines, I think. And to be able to enforce that order so if they didn't turn up for community service.... You then get the problem of how you enforce that, I suppose, but at least.*...(Judge)

> *Committal doesn't work because nobody is prepared to do it. And the real hard core know that. But if there is a lesser punishment. If you're going to have to do community service every weekend it might just trigger a few cases.* (Judge)

> *It might be a deterrent. But you can see a situation arising where a mother is ordered to do community service and will be seethingly resentful to the man who put her there, with her having no insight into why, that maybe it's down to her. Perceptions are quite rigid in these cases*. (Solicitor)

Cafcass monitoring

> *I think that could be helpful. How they're going to do it because they're stretched to the limit as it is but I think that could be quite effective. Because one of the problems we have is that we get ourselves a final order, mum and dad disappear and we only hear from them again if it breaks down.* (Solicitor)

> *I don't really see that that takes us very much further. If contact isn't happening you would hope that the father would bring it back to court. And quite honestly Cafcass - the delays, the resource issue, they're so overwhelmed that to give them another task I just don't think it is something which is particularly practical.* (Judge)

> *I have reservations about us policing orders. It's monitoring rather than enforcement but I think it strays perilously close. My fear is that in some senses it will absolve families of responsibility and they will seek to return responsibility for ensuring it happens to us rather than ensuring it works themselves. I think it could lead to Monday mornings being absolutely*

> *dreadful, a constant stream of phone calls 'he was 20 minutes late'.* (Cafcass officer)

One common theme, however, both among those who were cautiously optimistic and those who were sceptical, was an insistence that for the new provisions to stand a chance of working they had to be adequately resourced.

## Inadequate resourcing of current processes and services.

Under-funding was raised by the majority of our interviewees. Indeed several said that the system was essentially sound, and the Children Act a brilliant piece of legislation, it was lack of resource that was the key problem.

> *I think it's very short-sighted. You have a fantastic system in place for family work. You have children panel solicitors who I think do make a difference; you have fantastic judiciary who deal with family cases; and you have fantastic Cafcass officers. You have a fantastic piece of legislation. Just put the resources in to back it up. You have the mechanics in place; you're just not prepared to fund it.* (Solicitor)

> *There are deficiencies, not so much in the system itself but in the resources it has.* (Cafcass officer)

The effects were seen to extend across the whole system.

### *Not enough judge time.*

Not only did this cause delay because cases could not be heard promptly (as reported in chapter 9), but it could mean that judges did not have the time to deal effectively with the cases when they did come before them, particularly at early directions hearings:

> *It's what you can get out of the system and the system won't give you the money to do it. On the Children Act day sometimes the court has no time at all to spend any … and packing a list is not the way to deal with it. It restricts the time that Cafcass has to spend with the parents outside, it limits the time the judges have to actually sit down and try and understand the issues.* (Cafcass officer)

### *Not enough Cafcass time.*

> *Cafcass is in my view severely under-funded and under-resourced. It's is a valuable resource but the expectation of Cafcass officers is unrealistic.* (Solicitor)

> *They're so desperately short of resources. I think if you doubled the resources Cafacss had you would get a better result for the whole system.* (Solicitor)

Again this was not just a question of delay in producing welfare reports but of the time the officer could spend with each family in the process, which could lead to parents feeling short-changed:

> *More resources, more Cafcass than necessarily anywhere else to enable them to do more work than they are able to do in the time. I'm not trying to*

> *say that they don't do a good job but they could do a better job if they had longer. I think neither party would feel aggrieved if the Cafcass officer had longer because I think sometimes you find parties say –'they spent an hour with me, what do they know in an hour?'. That can lead to parents feeling a bit put out, and I think if they had more resources.* (Solicitor)

(It should be noted that this issue is not new. It was also highlighted in a study of families' experiences of welfare reporting prior to Cafcass [Buchanan et al, 2001]).

Nor is it necessarily only a problem of *parental* perceptions:

> *They are under huge pressure, which is half their problem. The amount of contact that Cafcass is allowed with the parents and the children is extremely limited because they are all working to a certain budget per case. I don't think that helps*. (Solicitor)

> *Because of the pressure of work it's hard for us to have the time to think, to prepare - what does this family need, what is this child going to need? So it does affect practice sometimes.* (Cafcass officer)

Officers were also perceived to have insufficient time to spend in conciliation, both in and out of court:

> *The problem with the Cafcass-led conciliation service is that Cafcass is under-resourced. It's very hard to fit them in.* (Solicitor)

> *I suspect this is a Cafcass issue probably as much as anything else. The court lists so many cases that it is a total nightmare. And they all need to see this one Cafcass officer who is losing the will to live, the parents are there for hours and hours and hours. I think more resources need to be put in for that to work.* (Solicitor)

Many interviewees also wanted Cafcass to be able to extend the services it offered, but recognised that this would only happen if resources could be made available. (We look at this further below).

### *Not enough resources for other services*

The availability of contact centres was a concern, variously expressed as long waiting lists; lack of local centres, particularly in rural areas; scarcity of centres which could offer closely supervised contact; limited opening hours and problems with legal aid funding:

> *Contact centres are pretty much overrun; we've been waiting 8, 10, 12 weeks recently. That didn't use to happen.* (Cafcass officer)

> *We've just had this case, the first I've ever had, where the local authority have offered supervised contact three times a week. It's things like that we need. All we've got is (X) centre and constantly government ignores the contact centre, doesn't fund it, we need them all over the place. If we have a decent thing like that that would make our job a thousand times easier.* (Judge)

> *We've lost ours. It shut a few months ago because they lost their funding so certainly places like that, where you have a really bad dispute at least there*

> *can be some contact, even if it's only as an initial point. And then you can hopefully move on from there*. (Magistrate)

Other areas in which more resources were said to be needed were: programmes for perpetrators of domestic violence; assessment services; and therapeutic services for parents and children. All of these services were seen as scarce and hence places were difficult to obtain.

### *Legal aid*

At the point we conducted our interviews legal aid was very much in the forefront of solicitors' minds because of the dispute between the government and the legal profession over fixed fees. A number of issues were identified. There were those which directly affected clients, such as not being able to afford representation or losing that representation in the course of the case because their income has just gone over the threshold for public funding or they cannot afford to keep up their contribution. As noted in chapter 10, this can lead to an inequitable position where one client is self-represented while the other has the benefits of publicly funded representation. Then there are the more indirect effects: clients may find it more difficult to get a legal aid lawyer as what are perceived to be low fees drive more and more practitioners out of legal aid work; they may get a poorer quality of service as firms respond to the 'funding crisis' by allocating the work to less experienced lawyers or para-legals; practitioners are less able to give the time to each case that it rightly needs.

Funding restrictions, however, were also seen to have an impact not just on the clients but on the court process. As reported in chapter 9, lawyers saw themselves, and were indeed seen by both the judiciary and Cafcass, as playing an important part in making their clients 'see sense'. 'Cuts' in funding, it was said, would reduce the time they have to do this; less experienced practitioners and para-legals would be less skilled at doing it; and the proportion of litigants in person would increase, thereby reducing the proportion of cases which settle, increasing delay and increasing costs to the overall system.

> *You are going to be seeing more and more legally aided cases being dealt with by para-legals because it's not cost effective for firms to handle them at a higher level. You will find that the more junior the fee-earner the less they are able to give the robust advice that many of these people need. It is the old adage, you pay peanuts, you get monkeys.*

> *You can't be the service you want to be. We do the element of social work, therapy, thinking about the consequences for your child. If I'm on a fixed fee I'm not going to do the social work bit where I say you really need therapy and this is why because I'm not going to get paid for it. It's going to be you're in, you're out, I'll see you at court next week. We can't do it any other way because we can't pay the bills.*

Finally, the availability of public funding could also limit access to other valuable services such as assessments, contact centres and remedial programmes.

## Building on strengths

> *It's an almost impossible task because of the types of people that we are dealing with, highly emotionally charged people, and I think the system works quite well.* (Solicitor)

> *There's no easy solution and I think that's what people struggle with, although there are faults with the system I think it is actually a good system, generally. I don't think people get as raw a deal as maybe some press reports say.* (Solicitor)

It is important to emphasise that although practitioners might see aspects of the court process which were not working as well as they might, they did not see it as generally failing, or 'not fit for purpose'. Indeed there were several elements in the system which were identified as making an important contribution to the resolution of contact disputes: contact centres, for example; agencies which provided specialist assessments or domestic violence services; mediation; therapeutic services for children and parents; counselling; expert reports; separate representation for the child. What was needed was more of these and a wider spectrum of services.

> *A whole load of resources. Private law is the poor relation*. (Solicitor)

> *Mediation, access to experts, access to family support in terms of people who could just be there to support contact while it's established, a wide range of resources.* (Cafcass officer)

Our interviews, it has to be said, were not very productive in terms of coming up with completely new ideas. However this may be partly because there are already a number of changes underway, particularly in Cafcass. Thus practitioners mentioned the piloting of family group conferences as a new approach to contact disputes; changes in the approach to in-court conciliation; the appointment of family support workers, all of which, on the whole, were seen as potentially valuable. There are also the changes likely to be brought about by implementation of the Children and Adoption Act, 2006.

### The pivotal role of Cafcass

As noted above, one of the most common problems identified in the current court process was delay caused by resource issues in Cafcass. However it was notable that no-one suggested that Cafcass was not an important part of the system, on the contrary it was seen as central. That is why the delays have occasioned so much frustration.

The traditional role of the Cafcass officer in providing an independent assessment of the case through a welfare report is still highly valued:

> *The chief benefit for me of a report is that Cafcass is the eyes and ears of the judge. The parents will often say what they think the child's wishes and feelings are but only Cafcass can provide an impartial report. The wishes and feelings of the child is the best reason for having a Cafcass report.* (Judge)

> *I think they help an awful lot. You're stuck if you haven't got one. It's an objective – we're the deciders but Cafcass are saying this is what it should be*

> *on the best interests of the child. They have the wherewithal to go into the home, and look at it, they're our eyes and ears.* (Magistrate)

As reported in chapter 9, family court advisors are also perceived to play a critical role in the settlement seeking process; whether in the early stages through in-court conciliation; through the process of preparing the welfare report, and in the impact that report often has on the parties.

> *A good Cafcass officer I think becomes a quasi mediator and can do an enormous amount to break logjams, get things moving and generally sort things out.* (Solicitor)

> *Cafcass play a really important, vital role in fostering agreement and quite often agreement can be reached through them.* (Magistrate)

Cafcass officers also contributed through observing contact and working with families under family assistance orders, rare as these had been until recently.

It was also notable that many interviewees were also complimentary about their local Cafcass practitioners, although sometimes reporting variable competence (which also applied, however, to solicitors and members of the judiciary):

> *We've got some extremely good and dedicated Cafcass officers. It's very very rare you see a poor report, the standard generally is very high.* (Judge)

> *Cafcass officers are very good, they're very professional, very child-oriented*. (Solicitor)

### *The Private Law Pathway and other innovations*

At the point our sample cases went through the courts there was some form of conciliation scheme involving Cafcass in all the study areas. By the time we conducted our interviews in-court conciliation at first directions appointments was in operation across the country. However a new system was on the horizon whereby, instead of meeting with a Cafcass officer at court on the occasion of the first directions hearing, parents - and, where appropriate, children - would be offered pre-court meetings. At the first hearing Cafcass would provide a brief report outlining the options for moving forward.

With the co-operation of the local judiciary such schemes have been piloted in some courts and are being introduced in others, although the reservations expressed by the President of the Family Division (Potter, 2008) were shared by at least some of our interviewees[53]. One of the judges interviewed explained how the system in his court had improved since our sample cases were being heard and his anxieties about the proposed changes:

> *Then the Cafcass officers had eight or nine cases in a morning. That old system was poor. The present system, which has been in place for a couple of years, is really good and effective. We have eight cases, in batches of two, with two Cafcass officers, for the day. So they have a long time to talk. It's had remarkable results. I don't want to appear too conservative, but I'm very concerned that the new system is going to put this in jeopardy. It is going to*

[53] The Cafcass plan had been to begin the process of rolling out these schemes across the country in 2008. This has been put on hold pending further discussions with the judiciary.

> *cause more delay, because they have their first appointment with Cafcass within about six weeks and the first appointment at court in seven to nine week. Well at the moment our dispute resolution would be about four weeks from issue.* (Judge)

Other interviewees, conversely, while acknowledging that the current (or old) system was effective in achieving early settlement or at least making some progress, highlighted its many weaknesses: the stressful conditions under which conciliation took place; the lack of time for proper discussion; the pressure parties may feel under to reach agreement which then prove fragile; the risk when domestic violence is not identified:

> *They usually have two (officers) on, to be fair to them, but when you've got about 10 couples waiting to be seen, then you've got the difficulty of how much time are you going to spend per person so some people feel that they haven't been listened to enough, they haven't had enough input because of the shortness of time. And then you've got clients who are waiting and waiting and waiting to be seen and who are getting wound up, because the other parent is looking at them funny or whatever, or his other half walked past and smirked or something, and all these things are going on in their heads and what have you, it's not really conducive.* (Solicitor)

> *I don't think our old system was a good system at all, there was no screening, you didn't know what you were doing, I think it's a much more civilised and considered system to have people out of the court building, when they're under no pressure and have time to reflect.* (Cafcass officer)

> *Unless the client gets to a solicitor quickly and says 'I'm frightened of going in the same room as my husband', very often it comes in just before the hearing, then you're literally catapulted into a conciliation meeting which can be very distressing for somebody who's been subjected to domestic violence. They might agree anything just to get out of the room. And then they come out and unless they tell – and again, you don't have time to talk to your solicitor very often – you are then pointed to the judge, you're trying to take instructions sometimes in front of the district judge by whispering which is obviously not professional, not very good, and then somewhere on down the line you will find out 'Well, actually, you know I didn't really want to agree this but I did because I wanted to get out of the room, I'm terrified of him'.* (Solicitor)

The new system, it was said, under which families meet with Cafcass away from the court, was not only less pressurised but meant that by the time of the first directions hearing the court would be better informed about the case:

> *I think the wording perhaps isn't very helpful, to call it early dispute resolution but the actual process and the early intervention of a judge with authority to put the cart on the rails very early on, and that at the first directions hearing the judge has a risk assessment and an assessment of the difficulties and a route forward be that agreement or something else I think stabilises families at an early stage when they're in crisis.* (Cafcass officer)

> *The thing is when you see people at court it is the most risky time to see them really because they are likely to agree to something that perhaps they shouldn't. So the idea in the private law pathway is that we should see everybody here and narrow the issues and at the same time do a risk assessment to see what direction we go. I think that is probably a step in the*

> *right direction, and the risk assessing has got to be a good thing to do. There's less pressure, it makes our assessments easier to do.* (Cafcass officer)

Some of the judges we interviewed had already encountered the new system and were generally in favour:

> *Since we have had the (new) conciliation scheme, a lot more cases come to us in the conciliation list where an agreement is already brokered by Cafcass. So even in the very difficult cases Cafcass are able to broker an agreement.*
>
> *This has been such a success in my view, Cafcass having seen the parties individually beforehand and trying to broker an agreement, get contact going at that stage before they come to court. So they're not coming to court defensively, they're coming in with contact having already started.*
>
> *It's in its early stages but the early signs are that it is successful and that people come away from these meetings in a more positive frame of mind. One of the driving forces was research showing that a lot of cases do result in settlements but they tend not to last. The hope is that this will yield better results.*

The proposed changes to the conciliation process are part of a planned shift in focus in Cafcass away from investigation and reporting towards assisting families to resolve their disputes –what has been described as 'sort it, don't report it'. This phase was something of a bugbear to some of our Cafcass interviewees who thought it represented a devaluing of the investigative elements of their role as well as a failure to appreciate how much 'sorting' they already did:

> *We're looking at a fundamental shift in the way we operate. Probably more interventionist in private law, that awful phrase, 'sort it don't report it', which I think is dismissive of a lot of good work that has gone on.*
>
> *I think one thing that this latest approach does, I think it completely devalues how important a section 7 report can be. It can be almost a therapeutic tool by way of giving parents the explanation of why you've made your decisions and the rationale for your recommendation and in some ways prepared them for the future. And a very brief outcome summary will not do that. There's a lot more for parents to come back to with a welfare report. It's much more the basis of a contract, than a court order. A court order is a piece of paper, it's fine if you like it, if you don't you can tear it up.*

However many themselves expressed a need for the service to be able to provide more in the way of input directed at achieving change by working with families, as illustrated in this interchange:

> Officer 1: *Sometimes we can do it, under a family assistance order or whatever, it's the support service bit of Cafcass I suppose. It's something we really need more of.*
> Researcher: *Are you able to do very much of that at the moment because the picture I get is that you're all under pressure.*
> Officer 1: *We're very cautious. But it would be more rewarding for us as practitioners if we could help people to move things on instead of doing assessments.*

Researcher: *If you did have more time, if Cafcass was miraculously given more resources, more people, what could you do that you are not doing now?*
Officer 2*: More work with the family.*
Officer 3*: More therapeutic work.*
Officer 1*: More the support side. Because you can see what's needed sometimes but you can't go down that road.*
Officer 2: *And it's hard when you know you could help. .*
Officer 3*: At the moment it's more like the NHS, get them out as quickly as possible.*
Officer 1*: Which denies the individualism of each case.*

These comments were echoed by solicitors and judges:

> *Cafcass do an exceptionally good job in the short space of time they have to look at a matter. But I think if they had the resources to have Cafcass officers involved with families longer then a lot of these problems could be overcome. Social Services are not the right department at all. Children and parents are sometimes left in limbo. If Cafcass had the resources – they're asked to do a report but they can't do a lot of work with the family, to progress something along because they're under too much pressure of work. If they had more time it might lead to better results.* (Solicitor)

> *I wish it were possible to involve Cafcass more in facilitating contact in difficult cases. For example where there has been a history of violence and the mother doesn't want to come into contact with the father, I wish it were possible to involve Cafcass officers in perhaps taking the children to contact or even in supervising contact. But their resources are so limited it wouldn't be realistic.* (Judge)

Changes in this direction were already underway by the time we conducted our interviews. Some areas, for example, had already appointed family support workers and interviewees spoke positively about what could be achieved:

> *For example if what you're hearing is that the child is upset before, during or after handovers what you would quite like to do in a way is to go back to being a proper social worker and go along and be there, say you could do it like this or that, have separate discussions about it, work with the child, do more intensive work. At the moment we are just too stretched as practitioners to do that so family support workers have done some of that, supported contact, supported handovers, that sort of thing.* (Cafcass officer)

> *The other thing they can do now is have a family support worker. That's worth a mention. They used to be against family assistance orders because of the funding but I think the way round that now is with the family support workers. The other day I had one come back and the family support worker came with the Cafcass officer and she gave me a report as to what she had done to start the contact off and her tenacity in doing it was fantastic. Her patience was overwhelming.* (Judge)

One area was incorporating parent education classes into their early dispute resolution processes, devising ways of including children, and piloting family group conferences:

> *We're putting in information meetings first. The one thing that stood out from the research on the Family Resolutions Pilot was that those information meetings, or whatever they called them, actually did have an impact on parents. I remember reading one mother saying, 'for the first time I began to understand how he saw things', which was quite something. I've done some research on what is working in other countries and tried to build on that. We can't do what we would ideally like to do, we can only do the one session. We're also using some Australian ideas (on child inclusive mediation); we've got some of their training videos. We have one family court advisor to each family, but the children will be seen by another worker who will feed back in. It's been quite difficult to organise it logistically, and it's only just getting off the ground.* (Cafcass manager)

> *One of the things we piloted here was family group conferences in private law. We had very good success rates with well over 90% agreements. And these were quite complex cases. It works because you're bringing in a wider arena of the extended family, you're got people who are important to that family who can bring in their experience. And they can also act as mediators. I went into it a bit sceptical I have to say and I've been very very impressed. We've found that even in cases which have been going on for years, somehow something happens and it's quite powerful.* (Cafcass manager)

Although it remains to be seen how effective these various innovations will be once they are rolled out across the country they are an indication that a lot is happening and that Cafcass may at last justify its nomenclature as the Children and Family Courts Advisory ***and Support*** Service.

### *Separate representation*

The ability to make the child a party and have them represented by a guardian ad litem (typically from Cafcass) is also seen as a strength of the current system (see also Douglas et al, 2006) which some people, while recognising the resource issue, would like to see extended:

> *Ideally, if there's a problem, if you had someone like a 9.5 guardian in right at the beginning, I think a lot more of the cases would be resolved more quickly and in a more satisfactory manner. But that's a resources issue.* (Solicitor)

> *My biggie is representation for the child really because I just worry so much that they are railroaded here. You're dealing with people's emotions; it's difficult sometimes to persuade them that they're not acting in the best interests of the child. I sometimes wonder whether we shouldn't have a guardian in all cases. I find it quite rare. But they'll never provide the funding for that.* (Solicitor)

> *I'm quite sparing about what cases I give 9 (5) guardians. It would be great if we had enough but we don't and we're not going to get them.* (Judge)

While interviewees often struggled to explain just why it made a difference they had no doubt that in some cases it did, even when the guardian ad litem was the same person who had previously acted as a Child and Family Reporter:

> *I would underline the fact that having the resource of the 9.5 guardian has made a huge difference in a number of intractable contact cases.* (Judge)

> *It's sometimes quite useful in terms of changing the whole dynamic of a case towards the child's best interests. It's something I've been tussling with, but somehow the presence of a solicitor for the child skews the dynamics, the power. The court will listen to a child's solicitor, although on the face of it they will listen to us (as Child and Family Reporters). I don't know the answer but there is a dynamic there which changes and I have had a number of them, about nine, not massive but enough to say it does.* (Cafcass officer).

> *Because a guardian ad litem's role is different from that of a Cafcass officer. They can wade into the case straightaway and they have far more time and, really, influence because of their role. And seem to be able to get things moving a lot faster. Certainly in the cases where we have had it it has helped*. (Solicitor)

## Child-focused and child inclusive practice

Separate representation is perhaps the most elaborate way of giving children a voice in proceedings and ensuring that proceedings are focused on their interests. While in principle the family court system should do this anyway, some of our interviewees were conscious that in some respects it fell short. Cafcass officers, in particular, were concerned that proceedings can so easily become dominated by the concerns of the adults and efforts to achieve some kind of agreement that they lose the focus on the child:

> *In court we're meant to be there for the child but sometimes it doesn't feel like that. It feels adult-focused, very much so. That's the big problem.*

> *I think sometimes it becomes led by the parents and the children, as much as we try, are left a bit in the background.*

> *Sometimes I feel I'm trying to broker an agreement with adults rather than always having the children's prime interests; I will see the children, talk to the children, but you sometimes feel you're just trying to keep the adults on side and work with them.*

The emphasis on the value of contact can also mean that the views of children who express opposition are not treated with respect

> *If there is a single fault in the system it is that children's views are not paid enough attention, by everyone, perhaps, and that includes parents and solicitors and sometimes us. It's all tied up with this view of a child being a developmental individual and it's only when you're Gillick competent that you have a clear view of your wishes and feelings. I think that is quite suspect.*

> *The wishes and feelings of children, which are meant to be taken so seriously, get overruled so often.*

Indeed, under the current system, unless there is a welfare report the views of the child may never be canvassed at all, being filtered through the report of their parents. This was another way in which some Cafcass practitioners saw the new dispute resolution schemes, whereby children would be seen early in the process, as representing an improvement.

*There are significant numbers of cases, the way the system currently operates, where the children are neither seen nor heard. That is intended to change with the new private law programme with the move to pre-court intervention, early intervention, where we will be seeing parents and children in all cases rather than only in some as at present.*

## Summary

A number of weaknesses in the operation of the current system have emerged from the research.

Delay is a critical issue and addressing the causes of non-purposeful delay – eg lack of court time, problems with the prompt preparation of Cafcass reports; shortage of assessment and therapeutic resources and poor co-operation by parents – is vital.

Non-compliance with court orders affects only a small minority of cases but the limited powers the courts have to deal with it exercises many of those involved in the system. At the point the research was conducted new legislation designed to enhance those powers had not yet been implemented and there was a degree of scepticism as to the likely effect. One common theme, however, was that if the new provisions were to work they had to be adequately resourced.

Under-resourcing of current processes and services was a strong theme. There was not enough judicial time available; not enough Cafcass time; not enough resources for other services such as contact centres, domestic violence programmes, assessment services and therapeutic services for parents and children. Restrictions on legal aid caused concern both in the impact on clients and on the court system.

Although practitioners might see aspects of the court process which were not working as well as they might, they did not see it as generally failing. Indeed there were several elements in the current system which were identified as making an important contribution to the resolution of contact disputes: contact centres, for example; agencies which provided specialist assessments or domestic violence services; mediation; therapeutic services for children and parents; counselling; expert reports; separate representation for the child. What was needed was more of these and a wider spectrum of services.

Cafcass was seen as a pivotal part of the system. The traditional role of the Cafcass officer in providing an independent assessment of the case through a welfare report is still highly valued. Family court advisors are also perceived to play a critical role throughout the process in helping the parties to settle. They facilitated contact through observing initial meetings and in some instances working with families under family assistance orders. What our interviewees therefore wanted was *more* of Cafcass so that the delivery of existing services could be improved, as well as extending that service to provide more support to families.

Cafcass has already begun a process of shifting the focus away from a primary concentration on reporting to more active intervention, and a number of interesting developments are in train. Hence some of these perceived needs may be addressed. What interviewees were concerned about, however, was that new services and new ways of working should not stretch resources so thinly that other essential tasks could not be carried out.

At the point our interviews were conducted Cafcass was proposing to replace in-court conciliation by a new system whereby parents and children would be invited to meet with Cafcass, away from the court, and prior to the first directions hearing. While opinion was mixed about this the old scheme was seen to have its weaknesses and interviewees who had already experienced the new one were generally in favour.

The ability to make the child a party and have them represented by a guardian ad litem (typically from Cafcass) is also seen as a strength of the current system which some people would like to see extended.

Separate representation is perhaps the most elaborate way of giving children a voice in proceedings and ensuring that proceedings are focused on their interests. While in principle the family court system should do this anyway some of our interviewees were conscious that in some respects it fell short. It was too easy to lose the focus on the child and the emphasis on promoting contact could mean that even when children expressed an opinion they were not listened to. One concern, however, that under the current system children will usually not be consulted unless there is a welfare report could be addressed under the proposed new system of early meetings with Cafcass in which children will have some part.

# Chapter 12: Summary and conclusions

This study was commissioned to address a fundamental information gap: when non-resident parents go to court for a contact order, what are the outcomes? Do they get contact and if so how much? How does what they end up with compare with what they were originally seeking? If there is a substantial discrepancy why is this? The context to the research were claims that non-resident parents do not get a fair deal from the family courts in that they may get little or no contact for no good reason.

## Profile of the sample cases

In attempting to answer these questions the study looked in considerable detail at 308 cases in which an application was made to the court under section 8 of the Children Act 1989.

### The cases

- Almost all these applications were brought by non-resident parents (289) typically fathers (265) most of whom had not been involved in contact proceedings before (236). Only 11 had had more than one set of previous proceedings. Thirty applicants had brought proceedings to give effect to orders (27) or agreements (3) made in previous proceedings.
- The children concerned were mainly very young: 53% of the 308 cases involved at least one child under the age of five at the point the application was made and 39% had no child older than that.
- In over half the cases (162 of 308; 53%) the parents had not previously been married to each other and at least 6% had never lived together. Only a small proportion had separated very recently (27% of those coming to court for the first time had separated within the previous six months while 34% had been apart for more than two years).
- In almost three-quarters of the cases no contact was taking place at the point the application was made (72%; 211 of the 294 where information was available) although in most (172 of 211; 82%) there had been some contact since separation. Just over half of all non-resident parents (164; 53% of the 289 where data was available) had seen their child within the past three months although in a quarter of cases (78; 27%) the interval exceeded six.
- At the start of the case at least 35% of resident parents (109 of 308) were known to have been opposed to any face to face contact, with a further 14% (44) wanting supervised contact and 10% (31) only resisting staying contact. In a third of cases (101 of 308; 33%) the issues appeared to be narrower while in 22 no information was available.
- In a quarter of cases (77), the index child was reported to be refusing direct contact, with one further child opposing only staying contact. In eight other cases a sibling was opposing contact.
- In over half the cases (167 of 308; 54%) the resident parent raised concerns about what we have categorised as ‘serious welfare issues’ ie domestic violence (34%); child abuse or neglect (23%); drug abuse (20%); alcohol abuse (21%); mental illness (13%); learning disability (1%) or fear of abduction (15%), including removal from the U.K. (8%).
- In a further 27 cases there had been such welfare concerns in the past, although they were not being raised as an impediment to contact in the

sample proceedings, while in 41 cases there were past welfare concerns in addition to those being raised in the sample proceedings.
- There were only 114 cases (37% of 308) in which there were no serious welfare concerns. By far the most common issue was domestic violence. In total in exactly half the sample cases (154 cases of 308) allegations of domestic violence perpetrated by the non-resident parent had been made at some point.

### The proceedings

- Ten cases were still continuing at the end of our data collection period, having been before the courts for between 29 and 42 months. A further six were truncated because either one of the parents died or the parents were reconciled. The remaining cases were before the courts for, on average, 11 months with 35% taking more than a year and 6% more than two.
- Two-thirds of all cases (200 of 308) had some professional evidence, typically in the form of a welfare report (196), usually from Cafcass (184). Eighty-nine cases had more than one welfare report. Separate representation of the children was rare (11 cases) and was typically ordered after the case had been before the court for a considerable time (mean 11 months).
- Evidence from other professional sources was fairly unusual (77 of 308; 25%). Most came from health or mental health professionals,
- Very few cases (32 of 292; 11%) went to a contested final hearing, of which at least 11 settled in the course of the hearing. Contested interim hearings were more common (68 cases) but less than a third (86; 30% of 292) had a contested hearing *at any stage*.
- Finding of fact hearings on domestic violence allegations were held in 12 cases (with another 12 being listed).

## Outcomes

The outcomes of the sample cases do not indicate that a substantial proportion of non-resident parents end up with no contact and where they do this is very rarely the result of an adjudication by the court:

- 79% of all completed cases (225 of the 286 in which the outcome was known) ended with an order or agreement for face to face contact;
- Since at the point the application was made to court contact was only taking place in just over a quarter of all the cases (28%) this should be seen as a substantial achievement for the court process;
- Staying contact was the most frequent outcome (139 of 286; 49%) followed by unsupervised visiting (58; 20%), with few cases (11; 4%) ending in supervised contact;
- Only 61 cases (21%) ended with either no contact expected to take place (39; 14%) or only indirect contact 21; 7%) with one case in which it was not clear whether there would at least be indirect contact.
- Only 7 of these had a contested final hearing. Of the rest 24 applications were withdrawn and 15 effectively abandoned; 9 agreed; with the rest not being agreed but not formally contested.

## Factors associated with whether there was to be any contact and the type of contact

Four factors proved to have a statistically significant association with the outcome of the proceedings in terms of whether there was to be any contact at all and if so of what type: whether the resident parent had raised serious welfare concerns; whether the resident parent was opposing contact at the start of the case; whether face to face contact was taking place at the start of the case and the age of the index child at the end of the proceedings.

The association between welfare issues and whether there was to be any face to face contact was particularly striking, such cases accounting for 84% of all cases ending in indirect or no contact, compared with only 42% of those which ended in staying contact. It is important to note, however, that the mere raising of welfare concerns was not determinative: of the 143 completed cases in which at least one serious welfare concern was raised 60% ended with staying or unsupervised visiting contact. There was no single concern in which the proportion of cases ending in unsupervised contact fell to less than half, nor did multiple concerns tip the balance.

Similarly, although the initial position of the resident parent was clearly highly relevant – in 71% of the cases ending with no direct contact (44 of 61) the resident parent had initially been opposed to any contact, compared to only 25% (56 of 222) of other cases - opposition did not guarantee success. Of the 95 cases in which the resident parent was originally opposing contact, and the precise outcome was known, more than half (54; 57%) ended in direct contact, and 32% in staying contact. In all, 61% of resident parents (99 of 163) who were opposing either staying or unsupervised contact or resisting any contact at all failed to achieve their objectives.

In terms of previous contact status in almost half the cases which ended up with staying contact (62 of 134; 46%) there was some contact at the time of the application compared to only 5% (3 of 61) of those where there was to be no face to face contact. Three-quarters of children in cases where there was to be staying contact (99 of 131) had seen the contact parent within the three months prior to the application (compared to only a fifth of those where there was to be no contact, 12 of 56 where this was known) and the gap extended beyond six months in only 14% (compared to 55% of those with no direct contact.

Again, however, the pattern was by no means invariable: 65% of non-resident parents who had no contact at the outset (117 of 181) finished up with either staying or visiting contact. Similarly over half the non-resident parents who had not seen their child for more than six months did get direct contact restored and 27% ended up with staying contact.

Children who ended up with supervised contact tended to be very young, with a mean age of four years, compared to six for unsupervised visiting and over six for staying contact. The likelihood of the case ending with direct contact fell off sharply in adolescence: eight of the 13 cases involving index children aged 13 and above by the end of proceedings ended with no face to face contact. This was clearly related to the greater likelihood that where older children were expressing opposition to contact their wishes would be heeded. All children aged 13 and above in this position ended up with either no face to face contact or contact if they wished it, compared to only 15 of the 29 children aged between five and nine. The significance of the views of older children in the outcome of proceedings was a theme which emerged very clearly from our interview data.

## How much contact do non-resident parents finish up with?

Almost four in five of the sample cases ended with an order or agreement for face to face contact. However in theory contact can mean anything from a couple of times a year to several times a week or even shared care. One of the arguments behind the pressure from groups representing non-resident parents is that it is not enough simply to get contact, it needs to be sufficient to enable them to play a substantial part in the child's life.

Again the data indicates that claims that non-resident parents often end up with very little contact are simply not substantiated. There was one case in our sample which fell into this category – four times a year for one hour, 'supported' by mother and her partner. However the circumstances in this case[54] were that the children were very much opposed to contact because of their memories of domestic violence; previous court proceedings had ended in first no contact and then indirect contact; two Cafcass officers had concluded that father's objective was primarily to harass mother; and the mother only agreed (at the first hearing) to this very limited contact in the hope that father would stop taking the case back to court repeatedly.

Indeed, as noted above, where there was to be any face to face contact it was most likely to include overnights (139 of 207; 67%) with only 58 (28%) allowing for only unsupervised visiting contact and 11 (5%) supervised visiting.

### The frequency and duration of staying contact (139 cases[55])

Apart from holiday stays, which were usually much more extensive, the most common pattern was two overnights per fortnight (47 of 114 where information was available, 41%), although a third of cases (38) had less than this and a quarter (29) more (chapter 2).

- 89% of arrangements (109 of 122) provided for staying contact at least fortnightly, with a third (40) being for more frequent stays.
- Only 12% of arrangements (14 of 114) provided for stays of more than two nights at a time (13 involving 3 nights and one, which was essentially a shared care arrangement, 6). The remainder of the cases were almost equally divided between one and two night stays (45% and 43% respectively).
- The average duration of staying contact worked out at 51 hours every two weeks, ranging from 14 hours to 137. More than two thirds of children (68%; 66 of 97) were expected to spend between 25 and 72 hours, with only 15% having more than this time and 17% less.
- 35% (48 of 139) also had visiting contact. On average this provided for contact on just under an additional two days per fortnight with 63% of cases (29 of 46) enjoying at least that much (to a maximum of 4 additional occasions); 33% (15) having at least one additional contact and only two (4%) having less than this).
- Visiting time added, on average, just under eight more hours contact time (7.7), ranging from less than one hour a fortnight to 24.

[54] Case 929

[55] Information was not always available on the details of the contact ordered or agreed. End numbers may therefore vary.

- Overall in 59% of cases (66 of 111) children were expected to have contact on either a staying or visiting basis on four or more days a fortnight with 32% having six or more contacts (to a maximum of 12). At the other end of the spectrum 5% (6) were limited to one day a fortnight; 15% (17) to two and 20% (22) to three.
- The expected combined visiting and staying contact time worked out at 55 hours per fortnight, ranging from 14 hours to 137. Only 8% of children (7 of 93) were expected to spend no more than 24 hours with their non-resident parent over this period. Three-quarters (70) were to have between 25 and 72 hours and 17% (16) more than this.

Whether these figures indicate that non-resident parents are getting 'reasonable' or 'substantial' contact is obviously a subjective judgement. An average of 55 hours a fortnight, which works out at 16% of the time, certainly falls far short of the 50:50 being demanded by some father's groups and is only about half the 30:70 split suggested by other commentators. However it is a not insubstantial amount, particularly when one bears in mind that in most cases it will be entirely contact time, since most of it will take place at weekends and after school.

It should also be pointed out that the amount of staying contact was very rarely determined by the court, only 19 of the 139 cases going to a contested final hearing. In comparison 114 ended with a consent order or agreement with four applications being withdrawn and two not being agreed but not actively contested.

## The frequency and duration of visiting contact (58 cases)

Visiting contact clearly limits the amount of input a non-resident parent can have in a child's life more than staying contact. The children in this position in our sample would see their non-resident parent on almost half the number of occasions per fortnight as did those who had staying contact, and the time spent would be less than a fifth. It is also likely to be a less satisfactory experience for both the parent and child. On the other hand, given these limitations, the frequencies and amounts provided for in our sample cases would generally enable parents and children to maintain a relationship.

Although expected frequencies varied widely, from five times a week to four times a year, the most typical pattern was weekly and less than fortnightly was very unusual:

- In 94% of cases (48 of 51) contact was expected to be at least fortnightly.
- In 61% it was to be weekly (19; 37%) or more (12; 24%).
- Contact was to be less than fortnightly in only three cases, with only one being less than monthly.
- The mean number of days on which contact was expected to take place per fortnight was 2.2.
- The average length of a single contact visit was 5.4 hours, ranging from one to 10 hours. Almost half the children (21; 48% of 44 [WIA]) had visits lasting between six and 10 hours.
- The average contact time per fortnight was 10.3 hours, ranging from one case in which contact was for only one hour four times a year to just over 12 hours a week.

Again it was notable how rarely the issue of quantum was determined by the court: only six went to a contested final hearing with 49 of the 58 cases being agreed, one withdrawn and two not agreed but not actively contested.

## How did the outcome of the proceedings relate to what the non-resident parent had initially sought?

The data presented so far indicates that:

- Most contact applications end in an order or agreement for face to face contact.
- Where there is to be face to face contact this will typically involve overnights.
- Two-thirds of children with staying contact spent at least two nights a fortnight with their non-resident parent and on average saw that parent on four or more days per fortnight (to a maximum of 12) and had 55 hours contact time per fortnight (to a maximum of 137). Only 5% were limited to an average of one day a fortnight and the least amount of contact time over that period was 14 hours.
- Where there was to be only unsupervised visiting contact the most typical pattern was weekly and less than fortnightly was very unusual:.

None of this suggests that the court process results in niggardly amounts of contact although, of course, opinions will differ as to what is sufficient.

The data on what parents obtained in the way of contact compared with what they sought (and data on both was not always available) similarly does not suggest that non-resident parents do badly from the court process.

<u>In terms of whether there was to be any contact and the type of contact:</u>

- Of those who were seeking to establish face to face contact where this was not happening at the point they made the application 7 in 10 (129 of the 184 where the outcome was known) succeeded.
- Where face to face contact was to take place, over three-quarters of those who sought overnight stays got them (78%, 110 of 142).
- Where there was to be only visiting contact, almost all those who wanted this on an unsupervised basis succeeded (60; 94% of 64).

<u>Where there was to be staying contact:</u>

- 67% (41 of the 62 in which information was available) achieved the frequency they had asked for, or more (7). Unsuccessful applicants were typically those who had sought contact on at least a weekly basis, who ended up with fortnightly or less.
- 67% (26 of 39) obtained the length of stay they had sought, or more (7).
- 64% (37 of 58[WIA]) got the number of nights per fortnight they wanted, or more (14).
- 79% (19 of 24[WIA]) succeeded in obtaining additional visiting contact.
- 73% (11 of 15[WIA]) got at least as many hours contact time as they had asked for or more (7).

Only in relation to the details of visiting contact and the enforcement of previous orders and agreements were non-resident parents more likely to fail to achieve their initial objectives:

Visiting contact

- Only 5 (of 12 where information was available) got the frequency they wanted.
- Only 2 (of 6) got the duration.
- In total 8 (67% of 12) did not get either.

Enforcement.

- 8 applicants (of the 26 where information was available) were entirely successful in getting the terms of the original order or agreement reinstated or improved on, and, where sought, obtaining a penal notice;
- 4 got the order confirmed though they did not manage to get a penal notice attached.
- 14 did not succeed in any respect with 10 getting no face to face contact, 2 getting the amount of contact reduced and 2 getting defined orders changed to either reasonable contact or as and when the child wanted contact.

Overall there was evidence that in 49% of cases (132 of 269) the outcome fell short in some respect of what the non-resident parent had initially applied for. Thus:

Almost a third (85; 32%) did not achieve the *type* of contact they had sought at the start of the case:

- 56 did not achieve face to face contact.
- 25 got face to face contact but only in the form of visiting contact rather than the staying contact they had sought (including five with supervised contact).
- 4 achieved their objectives in that they got face to face contact but had to accept it would be supervised.

A further 43 (16%) did not achieve everything they wanted in terms of the *quantum* of contact:

- 35 were successful in getting staying contact but did not achieve what they had hoped for in terms of frequency, duration, or visiting in addition to staying.
- 8 were successful in obtaining visiting contact but did not achieve what they had hoped for in terms of frequency or duration.

Four more did not get what they wanted in terms of enforcement (in that they did not get penal notices) although they succeeded in getting the previous arrangements reinstated or even improved on.

A 'failure' rate of 49% may, on the face of it, seem rather high, although looked at in another way one might say that non-resident parents stand a slightly better than even chance of getting everything they want, and given that there are two parties to the case (and occasionally three) this indicates an equitable process.

Moreover, when one compares the outcomes in cases in which the resident parent was initially opposed to either any contact taking place, or to unsupervised contact, or staying contact, it can be seen that *they* had a far less than an even chance of success. Thus:

- Of the 99 initially opposed to any face to face contact only 44 were successful (a 56% failure rate). Indeed 30 ended up with the child having staying contact.
- Of the 36 initially opposed to unsupervised contact only 10 were successful (a 72% failure rate) with at least 15 ending in staying contact.

- 28 had initially only opposed staying contact. Only 11 were successful (a 61% failure rate).

Overall, of the 163 resident parent respondents known to be initially opposed to either any contact, unsupervised contact or staying contact, 98 (60%) were unsuccessful. Not only is this more than the 49% of non-resident parents who did not achieve *everything* they had originally sought it is almost twice as many as the 32% who either did not achieve any contact or did not get the type of contact they had wanted. (Since we usually did not know what the resident parent wanted in terms of the quantum or frequency of contact we were not able to compare overall success rates).

Of course, it might be argued, this might only mean that more resident than non-resident parents take up an unreasonable position at the outset and this was not something we attempted to quantify. We did, however, look closely at all the cases in which non-resident parents did not get what they wanted in an attempt to make an assessment as to how many could be considered to have unfair outcomes in that there was no evidence of their unsuitability to have contact. The criteria for making this assessment necessarily varied: in the cases where there was to be no direct contact we looked at whether there was any evidence of the parent's unsuitability to have contact and whether they had given the court process a chance. At the other end of the spectrum, where the shortfall only related to the frequency and quantum of contact, we also looked at how this compared with the outcomes in other cases. This process, which we acknowledge is necessarily subjective but we hope disinterested, revealed only 27 cases in which we think there were grounds for regarding the outcome as unfair to the non-resident parent. This group consisted of:

- 5 cases in which the non-resident parent ended up with no contact at all;
- 5 in which they only got indirect contact;
- 5 where the outcome was unsupervised visiting rather than the staying contact originally sought;
- 1 in which the non-resident parent had to accept supervised contact;
- 10 in which the amount of staying contact was less than the applicant had sought;
- 1 in which the amount of visiting contact was less than applied for.

It is obviously not ideal that there should be any cases in which the outcome might be regarded as unfair. However in our view 27 out of 272 completed cases (10%) is not an enormous number and certainly does not suggest that a substantial proportion of non-resident parents are getting a poor deal from the court process. Moreover in the majority of these cases (11) the 'unfairness' related only to the quantum of contact. It is also important to note that while the outcome might be unfair to the non-resident parent that does not mean that it was also unfair to the child. Indeed in many cases in which non-resident parents did not achieve what they had originally wanted this was because of the child's objections.

## Why did some non-resident parents not achieve the contact they had applied for?

### Applicants who did not achieve face to face contact

The proportion of non-resident parents who ended up with no direct contact (61; 21%) might seem, on the face of, it surprising high. It was also very much at odds with the general consensus among our interviewees (as reported in chapter 10) that the courts operate on the principle that contact should generally be promoted. Indeed judges and magistrates were often surprised and dismayed when this finding was relayed to them.

As noted earlier, however, outcomes of no face to face contact were rarely the result of an adjudication by the court (7 of 61; 11%). In the majority of these cases (39; 64%) the applicant either formally withdrew or abandoned their application partway through. Others did not turn up to the final hearing or, while not formally consenting to the outcome, did not actively oppose it.

An applicant may 'give up', of course, simply anticipating that, if they persisted, the decision would go against them, and there were certainly a few in which the parent dropped out following an adverse welfare report. In the main, however, this was not a significant reason in the cases ending with no contact at all. Indeed two non-resident parents withdrew before the welfare enquiry had even began, another five before the report was submitted - in circumstances which indicated that the attitude of the officer was unlikely to have played a part - and eight withdrew even though the report was favourable to them.

A far more common reason was that having made the application the non-resident parent did not cooperate with the court process – missing court hearings, leaving their solicitor without instructions, refusing to see the Cafcass officer, refusing the contact on offer because it did not give them everything they wanted.

Withdrawal was more likely to be linked with an adverse professional report in cases ending in indirect contact. However again some gave up even though reports went in their favour, at least in the sense of recommending that there should be direct contact.

The cases which ended with no face to face contact also raised many questions about whether, if the non-resident parent had persisted and contact could have been established, that would have been in the interests of the child. In a strikingly high proportion of these cases (51; 84%) the resident parent had made allegations or raised concerns about what we categorised as serious welfare issues: domestic violence (38 of 61; 62%); child abuse or neglect (39%); drug (34%) or alcohol abuse (33%); mental health (15%) or fear of abduction (13%). Most of these cases (36 of 51; 71%) involved more than one concern. As noted earlier, there was a far greater prevalence of welfare concerns in cases which ended with no face to face contact than in any other outcome group.

Of course it could be argued that this simply means that the courts are overly cautious when resident parents make allegations. As pointed out earlier, however, the data shows that merely raising concerns is not determinative. Having undertaken a detailed analysis of the circumstances of each case and the evidence we concluded that there were at most 10 in which the outcome could be regarded as unfair to the non-resident parent, five ending in indirect contact and five in no contact.

Six of these cases involved children who were resolutely opposed to direct contact, the other four parents who might be regarded as 'implacably hostile'.

These two scenarios, implacably hostile resident parents and/or children emerged in our practitioner interview material as the two principal obstacles to achieving contact. Both the interview and the case file data indicate, however, they are not common. Indeed, if we take these 10 cases as a proportion of our whole sample of completed cases brought by non-resident parents (275) they work out at only four per cent.

## Non-resident parents who did not achieve the *type* of contact they sought

The interview material indicated that judges, Cafcass officers and lawyers all see *staying* contact as the goal to be aimed for, infinitely superior to visiting contact only. This is reflected in the fact that 139 of the sample cases ended with arrangements which included overnights (62% of the 225 cases in which there was to be any face to face contact) although strikingly almost half the resident parents in these cases (67; 48%) were known to have been initially opposed either to staying contact (19), unsupervised contact (18) or any contact at all (30).

There were 20 non-resident parents in our sample who had originally applied for staying contact but only achieved unsupervised visiting. Only one of these cases was decided through a contested court hearing and since the magistrates gave no reasons for not awarding staying contact the parents may have agreed on that before, or in the course of the hearing. All the other cases were either agreed or at least by the end of the proceedings were not actively opposed.

There appeared to be a wide range of reasons why staying contact was not achieved, ranging from the contact parent's continuing use of drugs to the child's or the resident parent's refusal. There were some where the parents agreed to restart contact early in the proceedings, and therefore the contact parent may have decided not to 'rock the boat' by continuing to seek staying contact, and others where achieving even visiting contact had been so difficult that they probably simply gave up the attempt and settled for what they could get.

Our assessment of the circumstances in these 20 cases indicated that there were 11 in which no serious welfare issues were raised as an objection to contact. In two of these we concluded that either the outcome of the case or the process by which it was reached could clearly be regarded as unfair to the non-resident parent. In the nine which did involve serious welfare concerns we thought there were three which were located towards the 'unfair' end of the spectrum and three which were clearly not, with the others being difficult to determine.

There were additionally nine cases in which non-resident parents ended up with *supervised* contact having originally sought unsupervised or even staying contact. None of these cases were resolved by adjudication: two were withdrawn and seven ended with consent orders. Six cases involved serious welfare concerns and in our view none of these could be deemed to have had an unfair outcome. In two of the cases where no welfare issues were raised the information on file did not enable a judgement to be made but there was one case which did seem to us to be unfair and not obviously justified by the needs of the child.

## Non-resident parents who did not achieve the amount of contact they sought

### *Staying contact*

In total, there were only 35 cases in which there was evidence that applicants who sought and obtained staying contact did not achieve everything they had originally asked for in term of frequency, quantum or additional visiting. It should be pointed out, however, that they may not necessarily have been disappointed with the outcome. Twenty-seven of the 35 succeeded in at least one respect (ie either in terms of frequency, length of stay, number of overnights, additional staying contact or overall hours). Indeed in 15 our judgement was that the total package probably represented a positive outcome in terms of the actual amount of staying contact enjoyed, with only 20 being clearly disadvantageous.

Most of the applicants who did not get everything they asked for in terms of quantum reached agreement with the resident parent, only eight cases went to a contested final hearing. The decisions in these cases on the narrow issues at stake by this point were more likely to favour the resident parent. However if one takes into account that in three cases the resident parent had been opposed to contact taking place at all, or to unsupervised contact, the picture looks rather different, with more outcomes favouring the contact parent. The non-resident parent may have lost the final 'battle' but they had won the war.

Assessing possible 'unfairness' to the non-resident parent is clearly harder when the gap between what was wanted and what was obtained relates only to the quantum of contact. What we therefore tried to do was examine these cases in the context of the arrangements made in other cases and what might therefore be regarded as 'normal', as well as whether there was anything in their circumstances which would have militated against contact taking place as they wanted. Using this yardstick we concluded that there were possibly 10 cases in which the outcome was 'unfair': five in terms of the frequency of staying contact; seven with respect to duration, and two the refusal of midweek overnights.

### *Unsupervised visiting contact*

There were very few cases which ended with unsupervised visiting contact in which there was data on both what applicants wanted and obtained. Of the eight in which it was known that the applicant did not achieve the quantum sought none went to a contested final hearing on the issue. It was also impossible to tell from the information on file why these parents had settled for less than they had wanted. However it seems probable that since in all but one case the resident parent had initially been opposing either any contact at all (4) or unsupervised contact (3) (and in one case pursued this to a contested final hearing) they decided to be content with the considerable amount they had achieved.

There was only one case in this group in which, in the researchers' opinion, the outcome might be considered to be unfair.

## Non-resident parents who did not succeed in getting a previous order or agreement enforced

As noted above, of the 30 applications brought because of non-compliance with a previous order or agreement only eight were entirely successful and 14 were

completely unsuccessful. This contrasts strongly with most of the other data we have presented on contact which indicated that non-resident parents were more likely than not to obtain what they had originally sought.

Detailed analysis of the cases, however, shows that what underlies this poor success rate is a far more complex picture than the courts failing to be tough enough with resident parents who never had any intention of complying:

- There were only a few cases in which the order had never been complied with or the arrangements had collapsed very quickly; in most it had held for some considerable period before breaking down.
- Although the circumstances were very varied there were two common factors: either the resident parent was voicing serious welfare concerns (17) and/or the child was refusing contact (17).
- 12 resident parents were objecting to any contact/unsupervised contact because of serious welfare concerns (alleged child abuse or neglect (8); domestic violence (6); drug abuse (3), psychiatric illness (3) fear of abduction (3) and alcohol abuse (2), with eight involving more than one issue.
- Of the children who were refusing contact where the resident parent was not raising welfare concerns two had been hit by the non-resident parent; one, newly diagnosed with epilepsy, became worried that his father would not be able to cope; two children seem to have decided they could no longer cope with parental conflict.

A careful examination of the 12 cases in which the non-resident parent did not get the order enforced suggested there were only two in which it could be argued that the court should have dealt more robustly with the case.

## Do non-resident parents get an unfair deal from the courts?

One of the first questions we asked our solicitor interviewees was whether they thought there was *any* justification for this perception. The general consensus seemed to be that a) the courts and Cafcass are most definitely not biased against non-resident parents in terms of contact; and b) that people generally get a fair deal but that c) resident parents start off from a position of strength and it is too easy for them to manipulate the system and spin things out; d) the whole process takes too long and some parents who could make a contribution to their children's lives decide to give up or cannot afford to continue; e) some resident parents and children remain persistently opposed to contact and the court's abilities to deal with this are limited; and f) at the end of the day the court has to act in the interests of the children and sometimes that means the non-resident parent may lose out.

The findings of this study, while generally giving a very positive picture of the court process, also indicate that there are some cases in which non-resident parents would have reason to feel aggrieved. However this is not because the courts are biased against them, far from it, and if this study achieves anything, we hope that it will dispel that myth.

It is a fact of life that when parents separate the parent with whom the child mainly lives will usually have the whip hand in terms of their contact, at least in terms of exercising power over a non-resident parent who wishes to remain in touch. (Where a non-resident parent does not, of course, there is not much the resident parent can do about it but that was not an issue for this research). Contact applications by non-

resident parents may therefore be seen as an attempt to invoke the power of the court to counterbalance this inherent advantage when it is being exercised to deny or restrict contact.

The findings of this study demonstrate that in many respects courts do redress this imbalance very effectively. Although there is no statutory presumption of contact in UK law it was absolutely clear from the study that the courts start from the principle that unless there are very good reasons to the contrary there should be contact; make considerable efforts to achieve this; and are usually successful. The fact that they are not always successful should not tempt us into accusing the system of favouring resident parents. Indeed it would be easier to make the opposite argument.

Our interviewees saw the two main stumbling blocks as the resistance to contact of the resident parent and/or the child. Of our 289 applications brought by non-resident parents the resident parent was initially opposing any contact in 108 (37%) and the child in 72 (25%). There can be a wide range of reasons for such resistance: the interview data suggested that for the resident parent it can reflect entirely reasonable anxieties about the child based on welfare concerns or stem from the emotional impact of the separation, vindictiveness, arguments about money, or a desire to make a break with the past. For children it could result from negative experiences of the non-resident parent pre or post separation; reaction to the hurt of them leaving, a defensive strategy to deal with conflicted loyalties; or even a deliberate undermining of the relationship by the resident parent. All these scenarios were evident in the file data.

In many cases resistance lessens or is overcome in the course of the court case. By the end of the proceedings face to face contact was expected to take place in over half the cases where the resident parent had initially opposed direct contact (55 of 99 completed cases; 56%) of which only nine had a contested final hearing on any issue. Children's resistance proved somewhat tougher. Nonetheless just under half of those cases (30 of 65; 46%) ended in direct contact.

The hostility of the resident parent, unless it is clearly based on well-founded and substantial welfare concerns (and sometimes even then) is typically addressed initially through encouragement and persuasion, in line with the courts' dominant philosophy that agreed solutions are more likely to work. This will be in the context, however, of making it plain that the court starts from the position that contact is generally regarded as being in the interests of children and unless there are very good reasons to the contrary, is likely to be ordered at the end of the day. An incremental approach is also usually favoured, starting off with indirect or more usually supervised contact in the hope of building enough trust to progress to more natural forms of contact.

If this is not effective a harsher approach may come into play, with threats of sanctions such as a change of residence and, very occasionally, the imposition of a penal notice. Most resident parents will come round; a few will not, at which point, eventually, the non-resident parent may throw in the towel, as happened in the four cases of possible 'implacable hostility' resulting in no direct contact in our study.

Eventually, if the non-resident parent wants to persist, the court may have to acknowledge defeat, since the only options currently available may be neither feasible nor likely to achieve the court's objective of securing workable contact. However both our interview material and the case sample data indicate that the court is unlikely to do this unless considerable efforts have been made to change the non-

resident's position over a long period of time and will probably only do so if the proceedings are having a demonstrably negative effect on the child.

Children's initial hostility, similarly, may dissipate quite quickly, perhaps through talking it through with the Cafcass officer or the ice being broken through observed or supervised contact. Dealing with persistent hostility on the child's part, however, is more difficult, not least because it may be very difficult to get at the root of the problem. It also poses two dilemmas. First, how to balance the court's obligation on the one hand to take account of a child's wishes and feelings when they are saying they do not wish to see a parent with, on the other**,** the duty to act in the child's long term interests, which may be jeopardised by the loss of a potentially significant relationship. Second, for how long should the court persist in trying to get contact going when this may expose the child to the negative effects of conflict and cause them distress. Again, at the end of the day, if no progress is being made the non-resident parent is likely to give up. This applied to all six of our 'unfair to the non-resident parent' cases which ended in no direct contact because of the child's resistance. There were no examples of the court doing so; rather more instances of the Cafcass officer seeking to bring the proceedings to an end.

The courts, therefore, generally do their best to achieve contact with the resources at their disposal. The question arises, however, whether those resources are adequate. Similarly, while there are many reasons why non-resident parents may give up, one fact is likely to be the sheer length of the proceedings and the costs of pursuing them without public funding. This fuels the perception that the system is weighted against them.

## Making the court process more effective

A number of weaknesses in the operation of the current system have emerged from the research. The length of proceedings is a critical issue and addressing the causes of non-purposeful delay – eg lack of court time, problems with the prompt preparation of Cafcass reports; shortage of assessment and therapeutic resources and poor co-operation by parents – is vital.

Non-compliance with court orders affects only a small minority of cases but the limited powers the courts have to deal with it exercises many of those involved in the system. At the point the research was conducted new legislation designed to enhance those powers had not yet been implemented and there was a degree of scepticism as to its likely effect. It will be important to monitor implementation of the new provisions to see if they making a difference. One common theme, however, was that if they are to be given a proper chance they have to be adequately resourced.

Under-resourcing of current processes and services was a strong theme in our interviews: not enough judicial time; not enough Cafcass time; not enough resources for other services such as contact centres, domestic violence programmes, assessment services and therapeutic services for parents and children. Restrictions on legal aid caused concern both in the impact on clients and on the court system.

It is important to note, however, that although practitioners might identify aspects of the court process which needed improvement, they also highlighted several elements which made a important contribution to its functioning: contact centres, for example; agencies which provided specialist assessments or domestic violence services;

mediation; therapeutic services for children and parents; counselling; expert reports; separate representation for the child. What was needed was more of these and a wider spectrum of services.

Cafcass is an absolutely pivotal part of the system. What our interviewees wanted was *more* of Cafcass so that the delivery of existing services could be improved, as well as extending that service to provide more support to families. Cafcass has already begun a process of shifting the focus away from a primary concentration on reporting to more active intervention and a number of interesting developments are in train. Hence some of these perceived needs may be addressed. What interviewees were concerned about, however, was that new services and new ways of working should not stretch resources so thinly that other essential tasks could not be carried out.

At the point our interviews were conducted Cafcass was planning to replace their current systems of in-court conciliation by a new process whereby parents and children would be invited to meet with Cafcass, away from the court, and prior to the first directions hearing. While opinion was mixed about this the old scheme was seen to have its weaknesses and interviewees who had already experienced the new one were generally in favour.

## Conclusion

The purpose of this study was to provide hard, detailed information about the outcomes of applications for contact orders under section 8 of the Children Act 1989 in order to inform the development of government policy in this controversial and emotive area.

The government position on post-separation family relationships is that children should continue to have a meaningful relationship with both parents, provided it is safe. Case law in the courts also strongly supports this position. Yet a perception has grown up that the courts are anti non-resident parents who end up with little or no contact for no good reasons and there has been considerable pressure to introduce a statutory presumption of contact, 'reasonable' or 'substantial' contact or even a particular ratio of parenting time, whether this be 50:50 or 70: 30.
The findings of this study demonstrate that the courts do start from the position that in the majority of cases contact is likely to be in the interests of the child; they make great efforts to try to secure this; and in most cases they are successful. Nor are the amounts of contact that non-resident parents end up with negligible, though they may not be as much as some of them would wish. We found no evidence that the courts are biased against non-resident parents and there is nothing in the research to suggest that a presumption of contact would make any difference at all to the court's approach. It is true that some of our judicial interviewees suggested that it might have an impact on the attitude of resident parents and therefore make their job and that of solicitors representing such clients somewhat easier. If that opinion were to prove to be widely shared – and we cannot say from this research that it is - then it is a policy option that might need to be explored. However we wonder whether the same objective could be reached by a public education programme without the concomitant dangers that a statutory presumption would entail in potentially undermining the fundamental principle of the Children Act: the paramountcy of the welfare of the child.

In our view debate about the need for a statutory presumption of contact deflects attention from the real priority, which is to ensure that the courts are as well-equipped as possible to deal effectively with contact cases. This is clearly not the position at present, as has been recognised by the new powers to come into play with implementation of the Children and Adoption Act 2006 which amends the Children Act 1989, and the changes within Cafcass to provide more intensive input at an earlier stage and to shift the focus from reporting on families to helping them. All these changes are potentially very positive and we hope will lead to a much wider range of services to support the courts in what is an incredibly difficult but essential task.

Most families, fortunately, do not bring their disputes to court and of course every effort should be made to provide services to families in the wider separating population so that as many as possible do not need to do so. However it is likely that there will always be some families who need the assistance of the courts and increasingly they are likely to be the most troubled and conflicted. It is crucial that adequate resources are provided: to the courts, to Cafcass, to other services which can all help to respond appropriately to the needs of these families.

In doing all this, however, it is crucial to keep one's eye on the ball, which is the resolution of disputes, whether by agreement or adjudication, in a way which will benefit children. This research has, necessarily, concentrated on whether or not proceedings resulted in contact being ordered and if so how much, and how this related to what non-resident parents wanted. However contact is not a good in itself. What matters is the quality of the relationships within the family and as other research has shown (Trinder et al, 2003; 2006) the fact that contact happens does not necessarily mean that it works. It is this more challenging task that the court system, and public policy, needs to address.

# Appendix tables

### Table 1: Number of children per case by contact outcome*

| | Contact outcome | | | | | | |
|---|---|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect only | No contact | All | |
| | % | % | % | % | % | No. | % |
| 1 | 55 | 66 | 80 | 71 | 56 | 184 | 60 |
| 2 | 37 | 19 | 20 | 24 | 31 | 94 | 31 |
| 3 | 6 | 10 | 0 | 5 | 13 | 21 | 7 |
| 4 | 3 | 5 | 0 | 0 | 0 | 8 | 3 |
| 5 | 0 | 0 | 0 | 0 | 0 | 1 | 1** |
| *Mean* | *1.6* | *1.6* | *1.2* | *1.3* | *1.6* | *1.5* | |
| (N=) | (139) | (58) | (10) | (21) | (39) | (308) | |
| | | | | | | | |

*incomplete cases and those where the precise outcomes were not clear are excluded from the detailed figures but included in the final column.
**One case, which ended with no face to face contact, involved five children. It does not appear in the other columns because it was not known whether there was to be indirect contact or no contact at all.

### Table 2: Age of youngest child at application by contact outcome*

| | Staying | Unsupervised visiting | Supervised visiting | Indirect only | No contact | All cases | |
|---|---|---|---|---|---|---|---|
| | % | % | % | % | % | No. | % |
| Age (years) | | | | | | | |
| Less than 1 | 4 | 10 | 20 | 0 | 8 | 23 | 8 |
| 1-2 | 19 | 29 | 40 | 14 | 26 | 73 | 24 |
| 3-4 | 22 | 29 | 20 | 10 | 21 | 66 | 21 |
| 5-9 | 48 | 29 | 0 | 48 | 33 | 118 | 38 |
| 10-12 | 7 | 2 | 20 | 14 | 10 | 24 | 8 |
| 13+ | 0 | 0 | 0 | 14 | 3 | 4 | 1 |
| | | | | | | | |
| *Mean* | *5.1* | *3.7* | *3.1* | *7.0* | *4.5* | *4.6* | |
| (N=) | (139) | (58) | (10) | (21) | (39) | (308) | |

*incomplete cases and those where the precise outcomes were not clear are excluded from the detailed figures but included in the final column.

**Table 3: Age of eldest child at application by contact outcome***

| | Expected contact outcome | | | | | |
|---|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect only | No contact | All |
| Age (years) | % | % | % | % | % | % |
| Less than 1 | 4 | 7 | 27 | 0 | 8 | 5 |
| 1-2 | 15 | 21 | 36 | 14 | 18 | 18 |
| 3-4 | 14 | 21 | 21 | 10 | 15 | 15 |
| 5-9 | 45 | 32 | 0 | 38 | 36 | 39 |
| 10-12 | 17 | 12 | 18 | 19 | 18 | 17 |
| 13+ | 5 | 7 | 0 | 19 | 5 | 7 |
| | | | | | | |
| Mean | 6.4 | 5.6 | 3.1 | 8 | 6.3 | 6.1 |
| (N=) | (138) | (57) | (11) | (21) | (39) | (307) |

*incomplete cases and those where the precise outcomes were not clear are excluded from the figures on each outcome but included in the final column.

**Table 4: Age of index child at application by contact outcome***

| | Expected contact outcome | | | | | |
|---|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect only | No contact | All |
| Age (years) | % | % | % | % | % | % |
| Less than 1 | 4 | 7 | 27 | 0 | 8 | 7 |
| 1-2 | 16 | 26 | 36 | 14 | 18 | 20 |
| 3-4 | 19 | 23 | 18 | 10 | 15 | 19 |
| 5-9 | 45 | 30 | 0 | 43 | 36 | 39 |
| 10-12 | 14 | 4 | 18 | 14 | 18 | 12 |
| 13+ | 1 | 2 | 0 | 19 | 5 | 3 |
| | | | | | | |
| Mean | 5.7 | 4.6 | 3.1 | 7.6 | 5.8 | 5.5 |
| (N=) | (139) | (57) | (11) | (21) | (39) | (307) |

*incomplete cases and those where the precise outcomes were not clear are excluded from the detailed figures but included in the final column.

**Table 5: Previous marital status by contact outcome***

| | Contact outcome | | | | | | |
|---|---|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect | No contact | All | |
| | % | % | % | % | % | No. | % |
| Married | 50 | 41 | 20 | 38 | 46 | 146 | 47 |
| Cohabited | 35 | 33 | 60 | 57 | 41 | 116 | 38 |
| Never cohabited | 5 | 10 | 10 | 0 | 8 | 19 | 6 |
| Not known if cohabited | 10 | 16 | 10 | 5 | 5 | 27 | 9 |
| (N=) | (139) | (58) | (10) | (21) | (39) | (308) | |

*incomplete cases and those where the precise outcomes were not clear are excluded from the detailed figures but included in the final column.

**Table 6: Interval between parental separation and application***

| | Contact outcome | | | | | | |
|---|---|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect | No contact | All | |
| *All applications* | % | % | % | % | % | No. | % |
| Up to six months | 22 | 19 | 40 | 5 | 18 | 56 | 22 |
| 7-12 months | 9 | 17 | 30 | 5 | 6 | 31 | 12 |
| 1-2 years | 17 | 21 | 20 | 25 | 33 | 52 | 20 |
| More than 2 years | 51 | 43 | 10 | 65 | 42 | 116 | 46 |
| (N=) | (109) | (47) | (10) | (20) | (33) | (255) | |
| | | | | | | | |
| *First-time contact applications* | | | | | | | |
| Up to six months | 26 | 18 | 33 | 8 | 27 | 48 | 26 |
| 7-12 months | 12 | 21 | 33 | 8 | 9 | 30 | 16 |
| 1-2 years | 21 | 24 | 22 | 39 | 36 | 45 | 24 |
| More than 2 years | 41 | 37 | 11 | 46 | 27 | 65 | 35 |
| (N=) | (81) | (38) | (9) | (13) | (22) | (188) | |

*incomplete cases and those where the precise outcomes were not clear are excluded from the detailed figures but included in the final column.

**Table 7: Case duration by contact outcome***

| | Contact outcome | | | | | | |
|---|---|---|---|---|---|---|---|
| | Staying | Unsupervised visiting | Supervised visiting | Indirect | No contact | All cases | |
| Months | % | % | % | % | % | | % |
| Up to 3 | 19 | 12 | 0 | 5 | 13 | 44 | 15 |
| 4-6 | 22 | 21 | 18 | 24 | 23 | 63 | 22 |
| 7-12 | 30 | 29 | 36 | 14 | 31 | 84 | 29 |
| 13-18 | 18 | 19 | 36 | 19 | 10 | 53 | 18 |
| 19-24 | 9 | 7 | 9 | 19 | 18 | 31 | 11 |
| More than 24 | 3 | 12 | 0 | 19 | 5 | 17 | 6 |
| | | | | | | | |
| *Minimum* | *1* | *1* | *4* | *2* | *1* | *1* | |
| *Maximum* | *42* | *48* | *23* | *29* | *32* | *48* | |
| *Mean* | *9.7* | *12.7* | *11.7* | *14.7* | *11.8* | *11.0* | |
| (N=) | (139) | (58) | (11) | (21) | (39) | (292) | |

*cases where the precise outcome was not clear are excluded from the detailed figures but included in the final column.

**Table 8: Serious welfare issues by contact outcome in cases where the resident parent initially opposed direct contact or unsupervised contact***

| | Staying | Unsup visiting | Sup visiting | Indirect | No contact | All cases | |
|---|---|---|---|---|---|---|---|
| | % | % | % | % | % | | % |
| Domestic violence | 48 | 39 | 57 | 50 | 73 | 82 | 54 |
| Child protection issue | 38 | 29 | 57 | 44 | 37 | 59 | 39 |
| Drug abuse | 38 | 16 | 43 | 28 | 53 | 51 | 33 |
| Alcohol abuse | 38 | 19 | 29 | 33 | 40 | 50 | 33 |
| Mental health | 25 | 16 | 29 | 22 | 13 | 31 | 20 |
| Learning difficulties | 0 | 0 | 14 | 0 | 0 | 2 | 1 |
| Fear of abduction | 21 | 32 | 0 | 6 | 20 | 35 | 23 |
| *Any of these* | *81* | *68* | *100* | *83* | *90* | *126* | *82* |
| | | | | | | | |
| Multiple concerns | 58 | 48 | 71 | 56 | 70 | 94 | 61 |
| Minimum | 0 | 0 | 1 | 0 | 0 | 0 | |
| Maximum | 6 | 5 | 4 | 5 | 5 | 6 | |
| Mean number of concerns | 2.1 | 1.5 | 2.3 | 1.8 | 2.4 | 2.0 | |
| (N=) | (48) | (31) | (7) | (18) | (30) | (153) | |

*Incomplete cases and those where the precise outcomes were not clear are excluded from the detailed figures but included in the final column.

**Table 9a: Case duration by court (family proceedings courts)**

| | Court | | | | |
|---|---|---|---|---|---|
| Months | 1 | 2 | 5 | 7 | 8 |
| | % | % | % | % | % |
| Up to 3 | 17 | 9 | 5 | 40 | 25 |
| 4-6 | 39 | 37 | 15 | 20 | 0 |
| 7-12 | 22 | 18 | 45 | 33 | 50 |
| 13-18 | 11 | 36 | 25 | 7 | 25 |
| 19-24 | 11 | 0 | 10 | 0 | 0 |
| > 24 | 0 | 0 | 0 | 0 | 0 |
| *Minimum* | *2* | *3* | *3* | *1* | *3* |
| *Maximum* | *23* | *16* | *22* | *13* | *14* |
| *Mean* | *8.3* | *9.2* | *11.3* | *5.7* | *8.6* |
| (N=) | (18) | (11) | (20) | (15) | (8) |

N=72

**Table 9b: Case duration* by court (higher courts)**

| | All courts | | | | | |
|---|---|---|---|---|---|---|
| Months | 3 | 4 | 6 | 9 | 10 | 11 |
| | % | % | % | % | % | % |
| Up to 3 | 17 | 7 | 20 | 20 | 30 | 6 |
| 4-6 | 39 | 24 | 8 | 27 | 13 | 13 |
| 7-12 | 22 | 33 | 24 | 30 | 17 | 6 |
| 13-18 | 11 | 13 | 8 | 17 | 30 | 25 |
| 19-24 | 11 | 16 | 32 | 7 | 7 | 25 |
| > 24 | 0 | 7 | 8 | 0 | 3 | 25 |
| *Minimum* | *1* | *1* | *1* | *1* | *1* | *3* |
| *Maximum* | *42* | *42* | *48* | *24* | *29* | *32* |
| *Mean* | *11.2* | *12.6* | *14.0* | *8.5* | *9.6* | *16.8* |
| (N=) | (64) | (55) | (25) | (30) | (30) | (16) |
| | | | | | | |
| % Incomplete cases | 0 | 4 | 7 | 9 | 3 | 12 |

N=72

* Five courts had incomplete cases (Court 3 was the only court with no cases which were still ongoing at the end of the data collection period).

## References

Advisory Board on Family Law, Children Act Sub-Committee (1999) *Report to the Lord Chancellor on the question of parental contact in cases where there is domestic violence.* London, Lord Chancellor's Department

Advisory Board on Family Law: Children Act Sub-Committee (2002) *Making Contact Work. A Report to the Lord Chancellor on the Facilitation of Arrangements for Contact between Children and their non-resident parents and the enforcement of court orders for contact.* London, Lord Chancellor's Department

Attwood, C., Singh, G., Prime, D., Creasey, R. and others (2003) *2001 Home Office Citizenship Survey: People, Families and Communities.* London, Home Office

Bailey-Harris, R. (1998) *Monitoring Private Law Applications under the Children Act*. *Report to the Nuffield Foundation*. University of Bristol.

Blackwell, A. and Dawe, F. (2003) *Non-resident Parent Contact*. London, Office for National Statistics

Booth, M. (1996) *Avoiding Delay in Children Act Cases.* London, Lord Chancellor's Department

Bradshaw, J. and Millar, J. (1991) Lone Parent Families in the UK. DSs Report No. 6. London, HMSO

Buchanan, A., Hunt, J. Bretherton, H. & Bream, V. (2001) *Families in Conflict: Perspectives of children and parents on the Family Court Welfare Service.* Bristol, Policy Press.

Butler-Sloss, Dame Elizabeth (2001) 'Contact and Domestic Violence'. *Family Law*, 31, May, 335-8

Department for Constitutional Affairs/Department for Education and Skills/Department for Trade and Industry (2004) *Parental Separation: Children's Needs and Parents' Responsibilities* Cm 6273 Norwich, The Stationery Office

DCA (2005) *Judicial Statistics England and Wales 2004* CM 6565. Norwich, The Stationery Office

Douglas, G; Murch, M., Miles, C. Scanlan, L. (2006) *Research into the operation of Rule 9.5 of the Family Proceedings Rules.* London, Department for Constitutional Affairs

Dunn, J. (2003) 'Contact and Children's Perspectives on Parental Relationships' in A. Bainham, B. Lindley, M. Richards and L. Trinder (eds) *Children and their Families: Contact, rights and welfare*. Oxford, Hart Publishing.

Dunn, J. and Deater-Deckard, K. (2001) *Children's Views of their Changing Families* York, York Publishing Services

Gilmore S (2006) 'Contact/Shared Residence and Child Well-Being: Research Evidence and its Implications for Legal Decision-Making'. 20 *International Journal of Law, Policy and the Family* 344-365

Harold, G. T. and Murch, M. A. (2005) 'Interparental Conflict and Children's Adaptation to Separation and Divorce: Theory, Research and Implications for Family Law, Practice and Policy'. *Child and Family Law Quarterly*, 17 (2) 185-205

HM Government (2004) *Parental Separation: Children's Needs and Parents' Responsibilities*. Cm 6273. Norwich, The Stationery Office

HM Government (2005) *Parental Separation: Children's Needs and Parents' Responsibilities*: *Next Steps*. Cm 6452 Norwich, The Stationery Office

House of Commons, House of Lords (2005) Joint Committee on the Draft Children (Contact) and Adoption Bill. HC 400-I, HL Paper 100-I. Norwich, The Stationery Office.

Hunt, J. (2003) *Researching Contact.* London, National Council for One Parent Families.

Hunt, J. (2004) *Child Contact with Non-resident Parents* Family Policy Briefing 3, University of Oxford

Hunt, J., Macleod, A. and Thomas, C. (1999) *The Last Resort: Child Protection, the courts and the 1989 Children Act.* London, The Stationery Office.

Judicial Review Team (2005) Thematic review of the Protocol for Judicial Case Management in Public Law Children Act Cases http://www.judiciary.gov.uk/publications_media/general/index.htm#family

Lord Chancellor's Department (2002) *The Government's Response to the Children Act Sub-Committee Report 'Making Contact Work'*. London, Family Policy Division 2, Lord Chancellor's Department.

Lord Chancellor's Department (2002) *Scoping Study on Delay in Children Act Cases.* London, Lord Chancellor's Department

Masson, J., Pearce, J., Bader, K., Joyner, O., Marsden, J. and Westlake, D. (2008) *Care Profiling Study*. Ministry of Justice Research Series 4/08 March 2008

O'Quigley, A. (1999) *Listening to Children's Views and Representing their Best Interests: A summary of current research.* York, Joseph Rowntree Foundation.

Peacey, V. and Hunt, J. (2008) *Problematic contact after separation and divorce? A national survey of parents.* London. One Parent Families/Gingerbread.

Perry, A. and Rainey B. (2007) 'Supervised, Supported and Indirect contact orders: research findings'. *International Journal of Law, Policy and the Family*, 21, 21-47

President of the Family Division et al. (2003) *The Protocol for Judicial Case Management in Public Law Children Act Cases.* London, Lord Chancellor's Department

President of the Family Division (2008) Family Division Practice Direction, May 2008: Domestic Violence and Harm www.hmcourts-service.gov.uk/cms/files/pd-residence-contact-orders-domestic-violence-090508.pdf

Potter, the Rt. Hon Sir Mark (2008) Resolution Inaugural Annual Lecture, 6 March 2008.

Pryor, J. and Rodgers, B. (2001) *Children in Changing Families: Life after Parental Separation*. Oxford, Blackwell Publishers

Rodgers, B. and Pryor, J. (1998) *Divorce and Separation*: *The outcomes for children* York, Joseph Rowntree Foundation

Smart, C., May, V., Wade, A., and Furness, C. (2003) *Residence and Contact Disputes in Court. Volume 1.* London, DCA Research Series 6/03

Smart, C., May, V., Wade, A., and Furness, C. (2005) *Residence and Contact Disputes in Court. Volume 2.* London, DCA

Sturge, C. and Glaser, D. (2000) 'Contact and Domestic Violence – the Experts' Court Report'. *Family Law*, September, 615-629

Trinder, L., Connolly, J., Keleet, J., Notley, C. and Swift, L. (2006) *Making Contact happen or making contact work?* DCA Research Series 3/06

Trinder. L., Beek, M. and Connolly, L. (2003) *Making Contact*. York, Joseph Rowntree Foundation.