Memorandum submitted by Men's Aid (CF 100)

TO: Children and Families Bill Committee

FROM: *Men's Aid,* a child and father focused charity (submitted by Robert Whiston FRSA)

SUBJECT: The enforcement of court orders for child contact: overlooked research findings

A. SUMMARY

The purpose of this submission is four-fold:

1. **To provide social science data in support of shared parenting that was not considered in the one-sided analysis of the Norgrove Report,**
2. **To rebut recent studies sponsored by the Nuffield Foundation,**
3. **To provide a perspective on the international adoption of shared parenting,**
4. **To bring to the attention of the Committee that shared parenting is in fact not a drastic step as claimed by some, but was a routine consideration in the 1980's and into the 1990's without any problems being highlighted**

We strongly support shared parenting as being in the best interests of the child and the societal well-being of the UK.

B. NUFFIELD FOUNDATION STUDIES

1. The Nuffield Foundation sponsored a review of shared parenting in May 2011 entitled "Caring for children after parental separation: would legislation for shared parenting time help children?" [1] costing £19,465.

2. This very recent research actually depends for its conclusions to a large extent on old research dating back to the 1980s and 1990s, for example: Emery (1982); Steinman (1983); Chambers (1984); Singer & Reynolds, (1987-88); Johnston et al (1989).

3. None of these studies statistically compared 'outcomes' for children from the families where children lived with their fathers for at least 30% time with sole physical residence.

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1. Belinda Fehlberg, Bruce Smyth, Mavis Maclean, and Ceridwen Roberts (May 2011). http://www.nuffieldfoundation.org/sites/default/files/files/Would%20legislation%20for%20shared%20parenting%20time%20help%20children)OXLAP%20FPB%207.pdf

4. A new Nuffield Foundation review of shared parenting is due to be published in 2014. With funding valued at £106,453 Dr Maebh Harding and Dr Annika Newnham, of the School of Law (Uni. of Portsmouth), hope to inform changes in government policy [2] (and neither of whom are social scientists). They will examine how 5 courts over a 6 month period promote shared parenting to separating parents.

5. Shared parenting as an area of policy study has been shockingly ignored in Britain resulting in no previous research being available. Both those in favour and those opposed to shared parenting agree on this point.

6. However, shared parenting, or joint custody, is not new to Britain. It was a common custody award in the years prior to the Children Act 1989. In the mid-1980s the Law Commission realised it had no data on the types of custody awarded in England & Wales and set about collecting figures (see Appendix A). Details of this and of shared residence (specifically mentioned in the Children Act) will be dealt with later in this Memo together with the intriguing 'geographical divide' in shared parenting.

7. It is therefore perplexing that those opposed to shared parenting should fear it because of its newness and because it is allegedly "untried and untested."

8. To date all of Nuffield's studies into shared parenting have been strangely negative and one suspects this more reflects the authors own preferences then the objective science. Norgrove's recent Report was heavily influenced by the same coterie of authors responsible for Nuffield's studies.

9. In the words of Professor Parkinson, speaking of the Australian experience which Norgrove, Maclean, McIntosh, Hunt et al, all heavily relied upon to make their case against shared parenting:

> "Almost none of the arguments made by the Norgrove Committee or the single parent organisations that oppose reform [in favour of shared parenting] can be supported by the available evidence". [3]

10. It is arguable whether this lack of knowledge in the UK is a product of grant making charities refusing to support this aspect of social policy or alternatively researchers obsessing to the exclusion of all other options on dissecting the pros and cons of 'contact' and its associated problems.

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[2] "Shared parenting", University of Portsmouth Business School, Dec 2012. http://www.nuffieldfoundation.org/how-do-county-courts-share-care-children-between-parents

[3] The Centre for Separated Families – 'Learning from the Australian Experience' - Professor Parkinson. http://www.separatedfamilies.info/policy-makers/family-justice-review/australian-experience/

11. Accepting that Britain has neglected to keep abreast of shared parenting as parental custody models there are, fortunately, more relevant and far more recent datasets from overseas to make up the shortfall.

12. Several countries in the EU - Europe and Scandinavia - have adopted shared parenting with no apparent ill effects. In each country it appears to have been accepted by the general public, the radical feminist lobby and fathers groups. Yet it is only the Australia example that has attracted 'flak' in the British debate. Indeed, the Australian government predicted the possibility of a feminist lobby reaction against the Act and initiated several statistical 'firewalls' in the hope of thwarting misinformation subsequent to its enactment.

C. ENFORCEMENT OF COURT ORDERS

13. Enforcement is a highly salient issue given recent statements from the government and the Justice Select Committee.[4] However, enforcement only becomes a highly salient issue when the model in operation or adopted is a "winner takes all" variety, as in the present 'residence and contact' model.

14. While the current regime promotes the idea that there is something to fight for then 'fights' will, not unnaturally, occur in a small percentage of cases. Reviews of recent research show that 'shared parenting' significantly reduces on-going conflict between the parents.

15. The UK Government's view and preferred option is that:

> Courts to be requires to work on the presumption that a child's welfare is likely to be furthered through safe involvement with both parents – unless the evidence shows this not to be safe or in the child's best interests.

16. Enforcement under the present regime has shaped personal experiences and testimonies. This can be expected to change radically once a fully developed 'shared parenting' regime together with a 'parenting plan' alternative is adopted. (N.B. Acceptable 'parenting plans' were in fact printed and stockpiled by the former Lord Chancellors' Dept as far back as 2001 but never implemented/distributed).

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[4] Report by Justice Cttee, chaired by Alan Beith MP, was unfavourable towards shared parenting (this is not the first time Alan Beith MP has expressed his dislike of the model).

17. Despite their initial impact and powerfulness, personal experiences and individual accounts like any other anecdotal evidence is limited in its use. They are, by definition, not representative, objective or complete.

1. THE POLICY CONTEXT

18. Many academic papers including those, for example by Trinder and Hunt, confidently assert that " . . . most parents decide their own parenting arrangements after family breakdown."

19. "It is well known that most parents decide their own parenting arrangements after family breakdown. Only about 10% of separated parents have court-determined contact arrangements. A fraction of those 10% seek enforcement of the court order. In 2011/12 there were just 1,383 applications for enforcement in England. To put that in context, 38,405 children were involved in contact applications in England and Wales in 2011." - Prof. Liz Trinder

20. However, this overlooks the fact that most parents are "bargaining in the shadow of the law" – meaning that they arrive at their Parenting Plan based on the existing custody laws and customs. As a consequence, when custody laws favour sole residential custody, parents are not freely and independently choosing their parenting plan.

21. Today's academic papers never mention the pre-1989 custody arrangements when a decade of surveys found fully 30% of awards in some court were 'joint' (Appendix B). The growth in joint custody in the 1970s and 1980s is shown in Appendix C. It was to regularise this that the Law Commission instituted 'shared residence' orders in the 1989 Act.

22. Of necessity, therefore a clearer picture can often be obtained from statistical information. The table below is taken from Table 'Judicial and Court Statistics 2010' (pub'd by ONS). It contradicts several significant points often made by those opposed to shared parenting. It should be noted that there is no column or row for 'shared residence' orders for 2010. This is due to not one 'shared residence' order being made, indeed, no shared residence orders have been made since the 1989 Act, in defiance of parliament.

Contact and Residence applications - **2010**, made under Sect 8 of the Children Act 1989.

2010 - Disposal of selected applicants in private law in all tiers of court	Applications withdrawn	Orders refused	No. of 'No Order' orders	Orders made	Total Orders made
Nature of application					
Parental responsibility	350	50	60	5,520	**5,980**
Section 8					
Residence	1,090	120	380	35,390	**36,970**
Contact	2,190	300	840	92,130	**95,460**
Prohibited steps	380	40	130	15,770	**16,320**
Specific issue	250	20	80	5,640	**5,990**
Others - not inc here					
Total	4,380	550	1,510	156,090	**162,540**

NB "others" include financial & special guardianship orders
Source: http://www.justice.gov.uk/downloads/statistics/courts-and-sentencing/judicial-court-stats.pdf Table 2.4

2. EXAMINATION OF THE 10% CLAIM

23. Firstly, the claim that only 10% of separating couples seek the services of the court is undermined by a total of 156,090 orders being made in connection with 'contact' issues. This is not 'a fraction' but is in excess of the annual total number of divorces and must therefore include some re-applications - in itself an indication that the system is not working satisfactorily.

24. In regards the 10% claim found in much academic literature it has to be noted that in the 2007 Scottish survey (which is one source used), the figure was obtained by the sample of 500 being predominantly based on unmarried young couples who had separated. 5 In the case of the ONS 'Child Contact Survey the figure of 10% resulting from the Omnibus survey of 2004 (which is another source used), it has to be noted that it is based on a representative sample of adults of only 935 adults aged 16 or over (649 were resident parents 312 were non-resident parents and 26 respondents were both – and so are counted in both categories).[6]

25. Of the 92,130 contact orders granted (see Table above), only a further 300 were refused (equiv. to 0.3%). If compared with the total number of orders granted, 162,540, then the 300 'refusals' of contact become a mere 0.18%. 'Refusals' we have to assume are based on either a perceived threat of violence or some unsavoury traits on behalf of the applicant.

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[5] "2007 Scottish Child Contact Survey" http://www.scotland.gov.uk/Publications/2008/03/12145638/4

[6] Child Contact Survey (The Omnibus Survey), DfES publish Office for National Statistics (ONS) Survey: Non-Residential Parental Contact with Children, March 2004.

26. The American state of Florida which passed equal time-sharing this year, 2013, has an interesting caveat that "clear and convincing evidence" must be shown if a departure from equal time-sharing is requested by any of the parties.

27. Secondly, 'contact' is claimed in 92,130 of instances annually which immediately burdens the court system. A glance at 2002 figures for Contact and Residence applications compared with those for 2010 above shows a figure of 61,356, so the situation is getting worse not better (see Appendix D).

28. In 1998 the "official" cost of divorce alone was put at £5 billion per annum The costs of legal aid has risen from £138 million in 1980 to £2.2 billion in 2005. Introducing shared parenting would dramatically reduce the burden of legal aid funded by the taxpayer.[7]

29. The cost of legal aid in England in 2007 was £34 per head while in other jurisdictions such as New Zealand it was £10 per head, Germany, £4, and France £3. [8]

30. Thirdly, if there are in the region of 132,430 (36,970 + 95,460) contested applications for residence or contact then 'conflict' is almost inevitable in a small percentage. Switching over to shared parenting which would be convened by third parties in the shadow o the court (i.e. outside the court), would result in the national caseload for family courts falling dramatically to somewhere in the regions of only 30,110 cases per annum.

31. Fourthly, switching over to shared parenting would also result in less opportunity for 'conflict' even among the minority of problem or 'high conflict' families. The reduction in the case load, possibly to as little as 31,000 cases per annum, would allow better scrutiny of those more intractable cases where conflict or violence is alleged. Not least because were shared parenting to be introduced parents attempt to deprive one another of legal custody or parenting time would disappear overnight. As Dr. Linda Nielsen points out:

> "First, the term "high conflict" has not been and probably never will be operationalised by social scientists or by professionals involved in custody decisions.

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[7] "Barristers should charge fixed fees, says Bar chairman" The Times, October 2, 2007 http://business.timesonline.co.uk/tol/business/law/article2574274.ece. And "Straw: legal aid bill has to come down" , The Times, Sept 25, 2007 http://www.familylawweek.co.uk/library.asp?i=3185

[8] The Times, Sept 30th 2007 http://business.timesonline.co.uk/tol/business/law/article2530554.ece

> The term covers too wide a range of behaviors to be of much practical significance in regard to legal custody or parenting time. The term is used in family court and by researchers to describe anything from intense anger and distrust, to ongoing problems with communication, to frequent disagreements about child-rearing, to verbal abuse, to injurious and life threatening physical violence.
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> Second, conflict is highest during the time when couples are separating – the time when custody decisions are being discussed or disputed.
>
> Moreover, parents often disagree about how much conflict exists in their relationship. But regardless of how it is defined, "high" conflict almost always declines after the divorce is finalized, meaning that conflict during divorce proceedings is not a reliable predictor of future conflict.
>
> Third, the term is used in overly broad, inconsistent and inappropriate ways by lawyers, judges and mental health professionals in the family justice system. That is, "conflict" becomes the weapon parents use in their attempt to deprive one another of legal custody or parenting time."

32. Although numbers are small, any non-implementation of a court order is a serious matter and risks damaging public confidence in the family justice system. For those opposed to shared parenting this presents something of a problem. Under the existing sole-mother-custody regime it is claimed that it is challenging ". . .for legislators and judges has been to find appropriate interventions for non-compliance."

33. However, 'the problem' of non-implementation recedes to the far horizon when shared parenting is introduced. By its introduction legislators and judges are relieved of the onerous decision of whether to reverse custody or not.

34. The truth of the matter is that during Whitehall committee sessions judges and the judiciary have made it plain in private that a). they already have enough powers to fine, imprisonment or transfer a child's residence from the defaulting parent but had no intention of ever using such powers, and b). they do not seek additional powers that have been offered since 2002 and would, in any event, never use them. In these Whitehall meetings they have never once stated that it would be either 'counter-productive or harmful to a child' (because it has been done, in extremis) but rather they choose not to take such action. Therefore, it is not surprising to learn that new sanctions of a), community service and b). Financial compensation made possible by the Children and Adoption Act 2006 have been little used.

3. THE STUDIES

35. It is often claimed by opponents to shared parenting legislation that in academic literature very few surveys or studies exist that deal with shared parenting. In fact, however, there are now over a dozen (26 in fact) studies that have directly compared the outcomes for these children and at least another dozen studies that have compared the parents in these two types of families.[9]

36. The consensus from these studies is that the outcomes for children who live with both parents at least 35% of the time are generally better than those who do not. Moreover, none of the studies published in peer reviewed academic journals found worse outcomes for the children in shared parenting families. With increasing numbers of studies comes a clearer understanding of the dynamics - one which runs counter to a number of negative assumptions and misconceptions commonly held about these families

37. When considering the data, we should keep in mind what the leading American researcher, Dr. Richard Gelles warned against many years ago, namely that of being "woozled." 10 Gelles coined the term to describe how the research on a subject (in his case domestic violence) was being misconstrued and manipulated by certain advocacy groups. The same might be said of the manipulation shared parenting is currently experiencing.

38. A few studies determine that 'shared parenting' exits when a child spends a weekday and a day or two at weekends with their father as shared parenting when, in fact, this is no more than sole-mother-custody with visitation or contact rights by the non-resident parent..

39. Gelles also referred to situations where only one or two studies were discussed or cited so frequently that they came to be held as "true" – even by people who had never even read the studies. In this 'elevated' state completely untrue or partially untrue studies can attain the status of "scientific evidence." This commodity is then used to promote a particular agenda or to uphold a personal opinion.

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[9] 'Shared residential custody: Review of the Research' L Nielsen, *American Journal of Family Law,* (January 2013).

[10] Wisconsin Journal of Family Law, "Custody and overnights for young children: Myths and Misconceptions" By Dr. Linda Nielsen, Professor of Adolescent & Educational Psychology, Education Department Wake Forest University, Winston Salem.

40. Shared parenting and 'sleepovers' (as a measure of shared parenting) are the focus of this memorandum. By way of example, a recent article in a British law school journal entitled "Shared residence: a review of recent research evidence" only presents four research studies, two of which are based on samples with large numbers of never married couples (Trinder, 2010). [11]

41. A poll carried out by Mishcon de Reye in 2009 to mark the 20th anniversary of the Children Act lead its authors to conclude that the Children Act 1989 is "not working" despite its good intentions. The poll (of 4,000 parents and children) revealed that:

- 38% children never saw their father again once separated
- 49% admitted to deliberately protracting the legal process in order to secure their desired outcome
- 68% confessed to indiscriminately using their children as 'bargaining tools' when they separated
- 20% of separated parents admitted that they actively set out to make their partners experience 'as unpleasant as possible' regardless of the effect this had on their children's feelings
- 19% of children said they felt used in the separation
- 50% of parents admitted putting their children through an intrusive court process over access issues and living arrangements

42. The Mishcon de Reya survey, of 2009, replicated findings by Bradshaw & Stimson et al 12 years ago into how often did the non-resident father see his children. Some of their 1997 findings in the University of York interim reports are displayed in the Table shown left.

How often did the non resident father see his children ? %

Frequency		% age	Sub-total
Regularly	at least once a week	47	
	at least once a fortnight	14	61
Less regularly	at least once a month	7	7
Infrequently	once or twice a year	10	
	1-3 years	8	
	more than three years	10	
	not at all	3	31
Total %			99

Source: Bradshaw & Carol Stimson et al in 1997 University of York, ESRC Programme on Population and Household Change Seminar. Policy Studies Institute, 13 March 1997.

Trinder relies heavily on conclusions from Australian Jennifer McIntosh and does not mention any of the other 26 studies included in the shared parenting papers by Dr. Linda Nielsen, Professor of Adolescent & Educational Psychology, Education Dept. (Wake Forest University). Disconnection, when a child fails to see its father often enough is shown to lead to a variety of social pathologies and behavioral deficits. Shared parenting would address many of these behavioral burdens. Ideally, shared parenting would see a marginal but measurable increase in sleepovers leading to a level of shared parenting comparable to 'joint custody' in the 1980s.

43. Many renown scholars have pointed out the serious methodological shortcomings in the McIntosh study and thus in Trinder's submission. Those critical of McIntosh's techniques include Michael Lamb, Richard Warshak, Marsha Pruett, Parkinson , Judy Cashmore and Dr. Linda Nielsen. All have

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[11] Child and Family Law Quarterly, Vol. 22, No 4, 2010

written in the strongest possible terms of their profound disquiet with McIntosh's techniques and hence her conclusions. In the opinion of this august role call she is not a social scientist and is clearly not familiar with the relevant research.

44. Judy Cashmore, in the *Australian Journal of Family Law* (2011), points out the obvious, namely, that:

> "Professionals involved in the family law system rarely work with parents where there are optimal circumstances."[12]

45. Cashmore, then goes on to ask; 'how then can this body of research be applied in circumstances that are rather less than optimal?' And, indeed, the same question can be posed to researchers who are frequently totally disconnected from firsthand experience stemming from actually being a parent.

46. Cashmore also makes the point that if the parents have never lived together and shared life as a 'family', it may be harder for separating parents to co-operate in an aspect of family responsibilities than if they have at one stage made a commitment together to a shared life. In other words, if adults have never shared the parental role, and are more likely to be in conflict and yet it is this subset of separating parents that is the perennial focus of much post separation analysis. Ironically, those who contend that non-residential fathering time has little or no impact on children often cite the meta-analysis by Amato and Gilbreth – a study which did not come to that conclusion (Amato & Gilbreth, 1999). [This was an analysis of 63 studies].

47. Gordon Finley, Edward Kruk, Stephen Baskerville, Patricia Morgan, and Michael Rutter are just some of the academics who have also written powerfully on the topic of shared parenting, the marginalizing of fathers and the current misinterpretation of Bowlby's attachment theory, which Bowlby himself had to accept as incorrect and revise showing that attachment was equal between fathers and mothers.

48. The debate in Britain has focused on two main aspects, that of the Australian experience and that of retaining the present regime and accepting its

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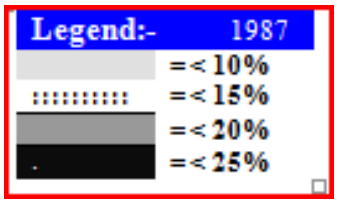
12 "P s from research" by Judy Cashmore and Patrick Parkinson.
Univ Vol. 25, No. 3, pp. 236-257, 2011

obvious flaws. Yet this ignores Britain's earlier experience with shared parenting then called joint custody. Ignored too is the striking geographical divide in post-divorce parenting arrangements as the following diagram illustrates (left).



The darker toned portion of the map, roughly a line south from the Wash to the Bristol Channel, indicates areas where courts awards high levels of joint custody, i.e. averaging 20% to 25% (see Legend. To the north of that line 'joint custody' was found to represent only a small percentage of awards (less than 10%). Since the Children Act 1989 that small percentage has grown even smaller and has now engulfed all of England & Wales.

49. As Footnote # 28 (in Part 4) helpfully points out: [13]

> "In the first half of 1986 the number of joint custody orders as a percentage of the total number of custody orders, increased by over 2% on the 1985 results, with several courts recording over 50% joint custody."

The public and politicians are never informed that in 1986 courts in the Midlands, South West and South East were awarding joint custody in over 50% of cases that came before them, nor that the year on year trend was increasing throughout the 1980s. Studies dating back to the mid 1970s, e.g. Wolfson, Maidment, show a growing trend emerging in joint custody (up from 3% to 18%; see Appendices C, E and F).

50. By 1991 when the Children Act became enacted joint custody all but disappeared in England & Wales and in no region was it close to 10%. Indeed, after the Children Act 1989 it never exceeded 5% and sole father custody also collapsed from its pre-1987 levels.

4. KEY MESSAGES FROM AROUND THE WORLD

51. Shared residential custody is becoming more prevalent worldwide. Other countries have, meanwhile, pressed ahead with reform and are at varying stages. In an international study of 14 countries, rates of shared parenting varied from 7% to 15% (Skinner, Bradshaw, & Davidson, 2000 & 2007).

a) **America**

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[13] Law Commission's 'Supplement to Working Paper No. 96'. by J. A. Priest and J. C. Whybrow http://lawcommission.wordpress.com/1986/10/01/00001/ (abridged version). See also Para 4.2 and 5.7, page 45.

52. Until recently only 5% to 7% of American children lived at least one third of the time with each parent after their divorce. But change is underway in Arizona and in Washington state where 30% to 50% of the children of divorced parents are living at least one third of the time with each parent (George, 2008; Venohr & Kaunelis, 2008).

53. The same is true of Wisconsin where 30% of the children of divorced parents are living at least with each parent alternatively (Melli & Browne, 2008).

54. Florida is the latest state to adopt shared parenting (ref. in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act), Bill No. SB 718, effective from July 2013.

> "It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child. Equal time-sharing with a minor child by both parents is presumed to be in the best interests of the child unless the court finds that . . .. . emotional health of the child would be endangered by equal time sharing . . . . [and there is] Clear and convincing evidence of extenuating circumstances justify a departure from equal time-sharing . .. .. "

b) Holland

55. Approximately 20% of children whose parents have separated are in shared residential custody (Smyth, 2009; Spruijt & Duindam, 2010).

c) Denmark

56. Approximately 20% of children (see above, Smyth, 2009; Spruijt & Duindam, 2010).

d) Australia

57. Trinder, in the 'Child and Family Law Quarterly' (Vol 22, No 4, 2010) cites recent Australian studies suggesting that shared care occurs in somewhere between 8% – 12% of separated families with the figure rising to 16%–17% in more recently separated families.

58. "In the AIFS evaluation, 49% of shared time arrangements were still in place after 4–5 years, compared to 87% of primary mother care arrangements. There was some evidence in this study that

equal shared care arrangements are more durable than 'unequal' shared care but even so only 60% of the former were still in place 4–5 years on." - Trinder

e) Norway

59. 25% of children have parents who live apart, 8% of them live with their fathers and 10% live in shared residence (Skjorten & Barlindhaug, 2007).

f) Sweden

60. Here, where the courts have the legal right to order alternating residence even when one parent is opposed, 20% of the children with separated parents live in two homes (Singer, 2008).

g) France

61. 12% of the children whose parents live apart share their time between the two homes while an additional 12% live with their fathers and spend some time living with their mothers (Toulemon, 2008). And some commentators put the figure at 15%.

62. Since 2002 shared residence has been an explicit legal option in France for separating parents. (Indeed, it is listed as the first option of possible parenting plans, with both parents receiving health insurance benefits and the government allowance for dependent children (Masardo, 2009).

h) Belgium

63. Since 2006 Belgium has had an 'alternating shared residence' format for custody arrangements.

i) Germany

64. Reform is at last hitting Germany (Feb 2013) with the introduction of equality rights for fathers that cannot be vetoed by the mother. This follows a ruling by the European Court for Human Rights which had criticised archaic German laws.14

j) Spain

65. All of the 15 semi-autonomous regions of Spain have some form of shared parenting, though it has to be conceded that the law is not fully implemented uniformly.

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[14] "Dads to get joint custody even if mum says no" http://germanherald.com/news/Germany_in_Focus/2013-02-05/2261/New_Dad_Law_Gives_Joint_Custody

k) Britain

66. Jointly / sharing custody was a routine award prior to the 1989 Act. Shared parenting, as it is nowadays termed, was common in the south of the country (see map above). Sole mother custody was awarded in 90% of cases only in the north of Britain (ref. Law Commission, "Supplement to Working Paper No 96").

67. Trinder, in her "Shared residence: a review of recent research evidence", implies that financial gain is part of reason fathers what shared custody:

> There are also suggestions that child support rules in some jurisdictions may offer an economic incentive to fathers to pursue shared care or at least to facilitate strategic bargaining, although disentangling financial and care motivations is fraught with difficulty.

This is untrue. It is not fraught with difficulties. The Trinder view overlooks the fact that almost all jurisdictions have made no provision for such claims by fathers. In the UK fathers have to have care for the child for 6 month in every 12 to qualify for a reduction in CSA payments. For instance, the test case of Hockenjos v Sec. of State (2000), pinpointed the government's inability to pay Child Benefit due to computer programme limitations and also that Unemployment Benefit, which for mothers contained an element for child care, was absent in a father's equivalent welfare benefit. Child Support payments occupy only a small part of the full welfare package available to separated mothers when taken together with alimony, maintenance, pension sharing and maintaining pre-existing payment commitments, e.g. mortgages, HP, college/schools fees.

68. There is no connivance or economic incentive. Twenty years ago Seltzer (1991) [a] in the US suggested that for fathers maintenance payments and contact are positively correlated, and Sutton in Australia has shown that after income there are two factors that are important - the relationship with the ex-partner, and the feeling of loss of control by him.

5. CO-PARENTING OR PARALLEL PARENTING?

69. With the removal by the 1989 Act of 'Care and Control' and its replacement with joint parental responsibility, ex-partners have to decide whether to co-parent or parallel parent.

70. Where parents can agree on parenting styles, routines, diet, religion, school, etc, they can practice 'co-parenting' or "cooperative parenting." The parents may themselves have irreconcilable differences with respect to each other, but they are in agreement with regards to the parenting of their children.

The children go easily from one parent's home to the other. Rules and routines remain fairly consistent, e.g. clothing, schoolbooks, notices, etc., are easily shared.[15]

71. Parenting styles generally fall into three categories: cooperative, conflicted, or disengaged. Parents who argue a lot and who cannot gain control of their hostility need to learn to disengage. They can still parent together, in a form known as Parallel Parenting.

72. Parallel parenting is the opposite of cooperative parenting. As the name suggests, parallel parenting involves the parents moving in the same direction without coming close enough for their personal paths to intersect. Normally parents might be expected to sometimes attend functions together in an effort to cultivate a family relationship as best they can while not being a family unit. Since this method is not possible with some broken families, the next best step is parallel parenting.

73. With parallel parenting, each parent agrees to parent their child "next to" one another rather than "with" one another and may even include an agreed Parenting Plan. Minor issues concerning the children are not communicated to the other; however, each parent does provide the other parent with information when it is "important."

74. In cases where one or both parents continue to undermine the parental authority of the other parent, cannot resist the lure of conflict, or engage in behavior that may be detrimental to the children. What must be keep in mind, however, is that these abusive parents comprise no more than 8% to 15% of divorced couples (Johnston, Roseby, & Kuehnle, 2009).

75. Counter intuitively Parallel Parenting may be the solution (Gary Direnfeld, MSW, RSW, Ontario, Canada). Recent case law in Ontario indicates that Parallel Parenting is being ordered in high-conflict cases where both parties are capable parents and ought to have an active role in their children's upbringing.

76. In the UK debate so far, high-conflict cases have been used as a reason not to consider switching to shared parenting awards but as can be seen from the above this does not a preclude to its introduction. Another argument for not to having shared parenting is that is complicated to arrange – and in a tiny percentages of cases this will be true - but as the above passages demonstrate this is also true of single mother custody where parents are not on speaking terms and there is no parenting plan.16

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15 "The Definition and Merits of Parallel Parenting", Allison J. Bell, Psy.D.

http://drallisonbell.com/collaborative-artlcles/the-definition-and-merits-of-parallel-parenting/

16 *ibid*

D. CONCLUSION

77. Much that has been written about and debated rests on the assumption that the primary caregiver is, and must always be, the mother. In turn, this is based on the early work by John Bowlby on mother attachment which has now been shown to be poorly researched and wrong. Writing about McIntosh's research Michael E. Lamb states: [17]

> She thus represented Bowlby's notion of monotropy as though it was an established and accepted fact . . .. Most children in two-parent families form attachments to both of their parents at the same stage in their development. . . . Relationships with both their mother and father profoundly affect children's adjustment, whether or not they live together"

Thus, there is today no consensus among experts and no synthesis of recent research in regard to overnighting (sleepovers) for infants and young children with separated parents – though a growing and substantial body of research has found positive benefits correlated with shared parenting where the children live 35% to 50% of the time with both parents after their divorce (ref. Linda Nielsen, 2012).

78. The primary attachment theory is accepted by both supporters and detractors of sharing parenting / custody as wrong and having no value and cannot be used to justify custody or basing parenting plans solely on the assumption that the primary attachment is to the mother when it has been shown to include anyone who will meet the infants immediate needs and demands.

79. For these reasons custody, parenting plans, overnighting (i.e. sleepovers) and shared care for infants and preschoolers has grown into one of the most controversial and complex issues of our age. Some fall back on the Best Interests of the Child mantra - but exactly who's best interests are we measuring? The child is never in court to state his / her preference. Scholars have branded the Best Interests of the Child mantra as indefinable and indeterminable. It is a measure that is subjective and not objective and is exercised by a third party after perfunctory conveyor belt explanations.

80. The body of research (26 studies) which has found positive benefits correlated with shared parenting where the children live 35% to 50% of the time with both parents after their divorce, were all published in peer reviewed journals and all analysed their data quantitatively and statistically.

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[17] A Wasted Opportunity to Engage with the Literature on the Implications of Attachment Research for Family Court Professionals

81. These 26 studies compared

    1. children who lived with only one parent (defined as the "primary carer" or "sole residential custody") and spent varying amounts of time with their non-residential parent (almost always their father) with
    2. children who lived in shared parenting families ("shared care" or "joint residential custody").

    Taken together, the studies involved approximately six thousand children from shared parenting families.

82. Trinder incorrectly states that "Studies have generally failed to distinguish between different types of shared care families and instead have 'lumped' together co-operative, litigating and all types of families in between into a single 'shared care' group." This is not true. Co-operative parents who self-select into shared parenting arrangements are profoundly different to the tiny number of "Litigating and high conflict families who enter substantially shared care arrangements." One also has to question the accuracy of Trinder's and McIntosh et al definition of shared parenting.

83. The "single contemporary UK study" of shared residence Trinder refers to is that authored by Peacey and Hunt and is fundamentally flawed and is in the opinion of one American academic, slovenly and wholly unworthy of being included as evidence or taken seriously.

84. The Nuffield Foundation sponsored academics who have concluded - despite the Children Act 1989 existing to ensure children should spend a substantial amount of time with both parents - that:

> "Introducing a default presumption that children should spend a substantial amount of time with both parents would overturn the provision in the Children Act 1989 that the welfare of the child should be paramount in deciding contact issues.[18]

85. This would overturn the provision in the Children Act 1989, namely, that the welfare of the child should be paramount and even included shared residence provisions. This is simply blind ideology overtaking reality and the written law. This delusional thinking then continues with this assertion:

> "There is no empirical evidence that increasing the amount of time spent with a non-resident parent improves outcomes for children. It is the quality of the relationship between parents and between parents and children, as well as practical resources such as housing and income that are important for children's well-being, not equal or near equal parenting time."

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[18] Shared parenting, Nuffield Foundation http://www.nuffieldfoundation.org/shared-parenting-0

86. The flaw in this argument is that if it is "the quality of the relationship" that matters then the present time allowance is insufficient to allow it to develop. Therefore, more time, i.e. quantity is required. With more quantity on offer the level of 40% of children losing contact with their fathers would most probably fall. Every Children Act, including that of 1989, has acknowledged the prime importance of both parents having an on-going relationship with their child after separation.

87. Contradicting one Nuffield report is another Nuffield report, this time written by Drs. Harding and Newnham. They correctly state that under the Children Act 1989, the children's best interests are paramount; this welfare test is very flexible so that orders for residence (where does the child live?) and contact (when he/she sees the other parent?) can be tailored to individual children's needs. The theoretical amount of time a child can spend with either parent has no bounds. Where they make a slight mistake is in stating that, "Shared residence, which was seen as highly unusual in 1989." The term shared residence was new in 1989 but the concept of sharing time and custody was not (see text above and Appendices).

88. Drs. Harding and Newnham note that there is increasing pressure towards adopting shared parenting. If mothers expect some dependability and consistency then it is not unreasonable for fathers' groups to demand the same dependability and consistency. This can only be guaranteed by introducing shared parenting. The Government has recommended its introduction and it is only a rump of academics, many elderly, and the Family Justice Review who are still cautioning against the inevitable advent of this as the default position.

89. There exists a real danger verging on the probable, that the now shared parenting law will be circumvented in the same or similar way as the pioneering aspects of the Children Act 1989 were nullified. Andrina Hayden (Spain) in her thesis correctly cites the relevant provision dealing with shared residence orders (Section 11 (4)) which provides:

> "Where a residence order is made in favour of two or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned."

Andria Hayden is not the only source for this view but is here cited as it is clear to any observer that she has no investment, either way, for pointing out the CA 1989 failings and shortcomings. Other sources include solicitors Charles Hale & Catherine Wood ("The Rise and Rise of the Shared Residence Order" http://www.4pb.com/uploads/files/dir32/dir1/6_0).

90. In other words it is expressly referencing shared residence orders and because the general presumption, under the Interpretation Act 1978 (c.30), that words appearing in a statute in the singular

also include the plural. The clear implication for Section 11 (4) of this is that provision is made to provide for a child to live with both parents even though they do not share the same household (Lowe, 2009, p. 4), and coincidently it continues the pedigree and validity of joint custody awards.

91. Shared residence orders can therefore vary from one end of the spectrum (where the child spends half their time with each parent), to the other end of the spectrum (where the child spends weekdays with one parent and weekends) with adjustments for school holidays etc. Significantly, Andria Hayden writes that the Law Commission at the time believed residence orders should cover both parents:

> "Rather than having to reflect these arrangements by making a residence order in favour of one parent and contact in favour of the other, the Law Commission believed that "it would be a far more realistic description of the responsibilities involved (…) to make a residence order covering both parents."

92. There can be no doubt that the Law Commission had intended to permit the making of shared residence orders. In so doing they were recommending the reversal of a pre-children Act decision Riley v Riley, which held that courts could not as a matter of principle make what is now known as a shared residence order. In other words, the Children Act was deliberately enabled to facilitate shared residence orders, now known as shared parenting.

93. The reason why this never happened is at one and the same time straightforward but denied at every turn. The Department of Health's Guidance and Regulations issued at the time stated they were not expected to become a common form of order, i.e. they were to be viewed as the 'exception' rather than the rule. The source for this is "Department for Children, Schools and Families, The Children Act Guidance and Regulations, Vol. 1, Court Orders, § 2.23." Curiously, subsequent edition of the guidance that can be accessed on the Internet do not contain this provision. However, at the time the stated reason was:

> ". . . . Because most children still need the stability of a single home and partly because in the cases where shared care is appropriate there is less likely to be a need for the court to make any order at all"

This has since been shown to be untrue, e.g. Denmark and Sweden. Given these negative overtones issued shortly after the coming into force, it is unsurprising that the judiciary revealed an unwillingness to make shared residence orders.

94. Nonetheless, as late as 2001, specific approval had to be sought to obtain a shared residence order (see Court of Appeal D v D, FOR 495). This case held that it was no longer necessary to show that exceptional circumstances existed before a shared residence orders could be granted. But further shared residence orders were slow in coming (ref. Re F (Shared residence orders) [2003] FOR 397).

95. Inquiries over a 3 year period (2009 - 2011) to the Department of Health (Kevin Brennan) and to John Bowis MP, the Parliamentary under-Secretary of State at the Dept of Health at the time (1993-96) have resulted in stonewalling and claims of misplaced memories and paperwork

96. There is, therefore, a very real fear that the present legal reform will suffer the same blunting and inversion that befell its 1989 predecessor and still later, in 2003 – 2004, the Early Interventions Project (authored by Oliver Cyriax). In this later instance, first the DfES civil servant given charge of the project did not read the EIP papers and secondly the EIP papers were "mislaid.". Dame Elizabeth Butler-Sloss, head of the Family Division, promised in an interviewed with Margarette Driscoll (Sunday Times, February 17, 2002) that:

> "Too many fathers lose contact with their children after an acrimonious divorce. That is about to change."

We are still waiting for this promise to be fulfilled.

97. Parliament originally intended, when passing the Children Act 1989, that shared residence orders should actually be preferred over sole residence orders (also referred to as 'sole mother custody'). House of Commons reference sheet, 89/5.13, dated June 26th 1989 clearly states[19] :

> "It is intended that another difference between residence and custody orders is that the new order should be flexible enough to accommodate much wider range of situations."

We are still waiting for that flexibility.

Reference sheet, 89/5.13 goes on to say:

> "In some cases the order will provide that the child will live with both parents, even though they do not share the same household. If such an arrangement is practicable there is not reason to discourage it."

But discouraging shared residence has been the order of the day every year since 1989.

98. How much longer must we wait before change finally kicks in ?

April 2013

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[19] Equal Parenting Council http://www.kittybrewster.com/family/shared.doc

APPENDIX A

Shared parenting, or joint custody, is nor new to Britain. It was a common custody award in the years prior to the Children Act 1989. In the mid-1980s the Law Commission realised it had no data on the types of custody awarded in England & Wales and set about collecting figures.

Table 7 below is taken from J. A. Priest and J. C. Whybrow's paper for the Law Commission 'Supplement to Working Paper No. 96'.

Table 7. Children subject to custody orders by age and sex. (%) (n = 2,927).

Proportion of children in each category subject to: wife husband and joint orders

			Age of children			
Custody order	Boys	Girls	0 – 5	6 -10	11 -15	16+
Wife orders	71	73	80	72	67	61
Husband Orders	8	6	3	6	12	16
Joint orders	21	21	16	23	21	22
Total No. (100%)	1,497	1,430	760	778	788	173

Source: Law Commission's 'Supplement to Working Paper No. 96'. by J. A. Priest and J. C. Whybrow

lote how many joint orders (in red) and father-only custody orders were historically granted.

APPENDIX B

The Law Commission in a survey of courts found that the highest proportion of joint custody orders were to be found in the South Eastern and Western Circuits and the Birmingham Group of the Midlands and Oxford Circuits (Table 8).

Table 8. Courts with the Highest Proportion of Joint Custody Orders - in the South Eastern and Western Circuits and the Birmingham Group of the Midlands and Oxford Circuits.

Court	%age of Joint Custody Orders	Total No. of Custody Orders
Oxford	43	1,247
Truro	42	79
Cambridge	40	804
Barnstable	38	34
Edmonton	36	702
Tunbridge Wells	36	601
Guildford	36	477
Aldershot* & Farnham	33	424
Reigate	32	185
Maidstone	30	452

Source: Law Commission WP No 96

* It is perhaps surprising, given that Aldershot is a military town where divorce levels are higher than any other occupation class that Joint Custody orders should be among the highest nationally. This may be in part due to the countervailing effect of nearby towns such as Farnham.

APPENDIX C

The growth in joint custody indicated in surveys, dating from 1973 to 1985, is shown here in Appendix C. It was to regularise this growth in joint custody that the Law Commission instituted 'shared residence' orders as a nationwide option in the 1989 Act.

Table 6. Custody Orders in Divorce Proceedings (%ages)

Study	Year of data	Custody to wife	Custody to husband	Joint custody	Others	Total number
Maidment	1973	77.6	19.0	3.5	0.0	58
Wolfson	1974	81.4	13.2	5.2	0.2	424
Bristol	1979-80	81.4	11.6	7.0	0.0	1,290
National	1985	77.4	9.2	12.9	0.7	82,059
Bristol	1985	73.0	9.6	16.9	0.5	4,676
Wolfson	1985	72.2	9.2	18.1	0.5	12,771

Source: Law Commission's 'Supplement to Working Paper No. 96'. by J. A. Priest and J. C. Whybrow, Table 6 (p.98) 1987.

APPENDIX D

Comparing 2002 figures for Contact and Residence applications with those for 2010 (in the text above) shows a figure of 61,356, so the situation is gradually getting worse, not better

Table 2. Contact and Residence applications - 2002
made under Sect 8 of the Children Act 1989. (Hansard 24th May 2004: Column 1318W).

Disposal of selected applicants in private law in all tiers of court, 2002	Applications withdrawn	Orders refused	Number of 'No Order' orders	Orders made
Nature of application				
Parental responsibility	773	290	132	8,240
Section 8				
Residence	1,536	158	431	**30,006**
Contact	2,373	518	945	61,356
Prohibited steps	300	40	77	8,889
Specific issue	207	33	67	2,940
Total			**1,652**	

APPENDIX E

The public and politicians have never informed about the level of joint custody awarding through the 1980's. Although courts in the Midlands, South West and South East have been highlighted as awarded joint custody at between 30% and 50% of cases that came before them other court - from Altrincham (Manchester), to Bow (London), and Exeter to Durham - were also routinely making joint custody (shared parenting) awards (see "Absolute numbers of joint orders" column below).

Table 10. Joint Custody orders made by the Ten Courts. (n = 612)

Table 10 Joint Custody Orders made by the Ten Courts n. = 612

Court	Absolute Number of Joint Orders	The Awarding of Care and Control (Percentages)			
		Care and Control to Wife	Care and Control to Husband	Shared Care and Control	Care a Contr Order
Aldershot	24	83	13	0	4
Altrincham	17	53	47	0	0
Bow	22	55	36	0	9
Durham	5	60	40	0	0
Exeter	50	90	10	0	0
Guildford	72	81	18	0	0
Manchester	6	83	0	0	17
Middlesbrough	27	82	0	4	15
P.R.F.D.	344	83	16	1	1
Wandsworth	45	89	11	0	0
Total	612	81	16	0.4	2

APPENDIX F

The Law Commission's Table 9, found in 'Supplement to Working Paper No. 96' (by J. A. Priest and J. C. Whybrow), shows joint custody awards at Guildford court as being 33.8% of all custody awards and at Exeter court as being 29.2% of all custody awards (n = 2,927).

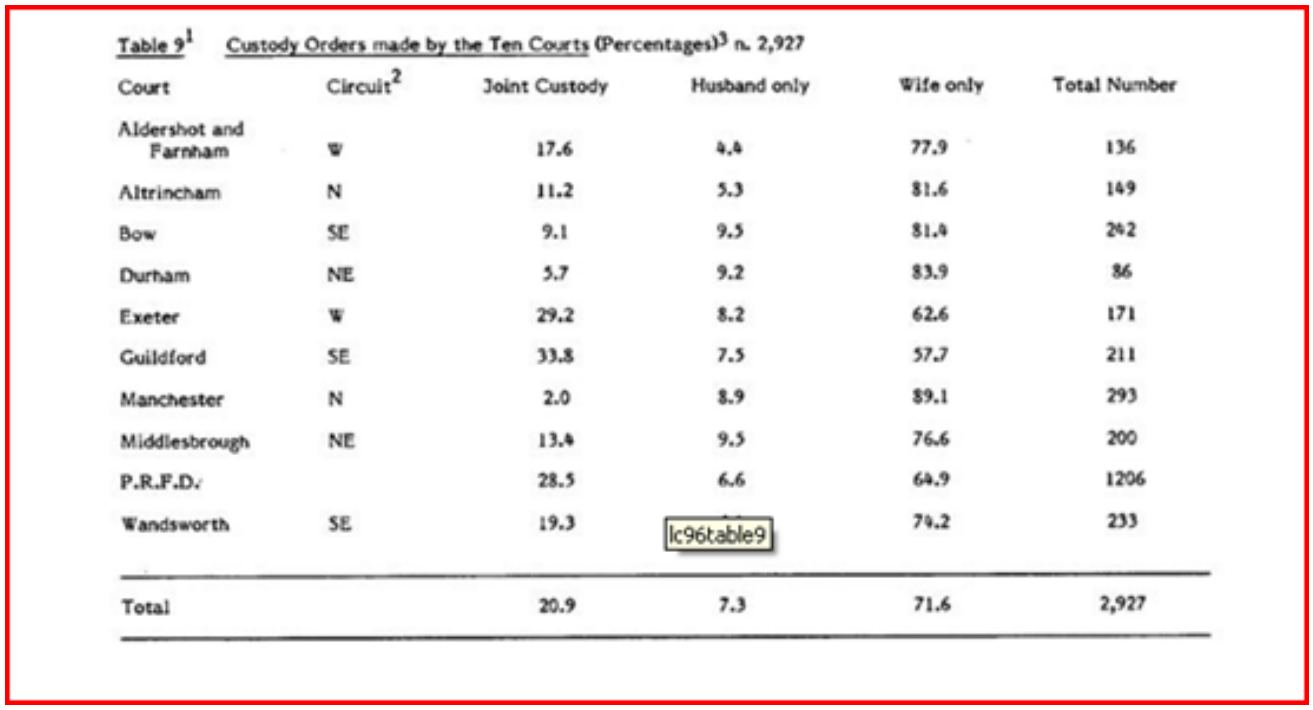

Table 9[1] Custody Orders made by the Ten Courts (Percentages)[3] n. 2,927

Court	Circuit[2]	Joint Custody	Husband only	Wife only	Total Number
Aldershot and Farnham	W	17.6	4.4	77.9	136
Altrincham	N	11.2	5.3	81.6	149
Bow	SE	9.1	9.5	81.4	242
Durham	NE	5.7	9.2	83.9	86
Exeter	W	29.2	8.2	62.6	171
Guildford	SE	33.8	7.5	57.7	211
Manchester	N	2.0	8.9	89.1	293
Middlesbrough	NE	13.4	9.5	76.6	200
P.R.F.D.		28.5	6.6	64.9	1206
Wandsworth	SE	19.3	lc96table9	74.2	233
Total		20.9	7.3	71.6	2,927

See also:

'The enforcement of court orders for child contact: interim research findings'

http://www.publications.parliament.uk/pa/cm201213/cmpublic/childrenandfamilies/memo/cf40.htm

http://www.indret.com/pdf/795_en.pdf