Joint Committee on the Draft Children (Contact) and Adoption Bill

Session 2004—05

Draft Children (Contact) and Adoption Bill

Volume II: Evidence

Ordered to be printed 24 March 2005 and published 12 April 2005

Published by the Authority of the House of Lords and the House of Commons

London: The Stationery Office Limited
£20.50

HC 400-II
HL Paper 100-II
## ORAL EVIDENCE

- **Resolution, Family Law Bar Association (FLBA)**
  - Written evidence
  - Oral evidence, 24 February 2005
  - Supplementary written evidence (Family Law Bar Association)

- **Dame Elizabeth Butler-Sloss and Mrs Justice Bracewell**
  - Family Division of the High Court
  - Written evidence
  - Oral evidence, 24 February 2005

- **Children and Family Court Advisory and Support Service (CAFCASS)**
  - Written evidence
  - Oral evidence, 24 February 2005

- **Welcare Accord Centre, Kilburn, National Association of Child Contact Centres, Relate, UK College of Family Mediators**
  - Written evidence (Relate)
  - Written evidence (UK College of Family Mediators)
  - Oral evidence, 24 February 2005
  - Supplementary written evidence

- **Families Need Fathers, Grandparents’ Association, Both Parents Forever**
  - Written evidence
  - Oral evidence, 3 March 2005
  - Supplementary written evidence (Grandparent’s Association)

- **UNICEF, Overseas Adoption Helpline**
  - Written evidence (Overseas Adoption Helpline)
  - Oral evidence, 3 March 2005
  - Supplementary written evidence (Overseas Adoption Helpline)

- **Association of District Judges**
  - Written evidence
  - Oral evidence, 3 March 2005

- **Women’s Aid, National Society for the Prevention of Cruelty to Children (NSPCC)**
  - Written evidence
  - Oral evidence, 3 March 2005

- **Rt Hon Margaret Hodge, Minister for Children and Lord Filkin CBE, Parliamentary Under-Secretary of State, Department for Education and Skills**
  - Written evidence
  - Oral evidence, 3 March 2005
  - Supplementary written evidence
WRITTEN EVIDENCE

Barnardo’s 135
Ms T Boo 138
British Association for Fostering and Adoption 140
Campbell Chambers Solicitors 138
Centre for Research on the Child and Family 141
Centre for the Study of Safety and Well-Being 142
Children’s Rights Alliance 144
Claimants in the Judicial Review R (Charlton Thomson and others) v Minister of State for Children 147
Criminal Law Solicitors’ Association 152
Mr Philip Else 154
Family Rights Group and others 155
Rt Hon Frank Field MP 159
Mr Martyn Ford 162
Mr John Furness 162
Mr Joe Healy 164
Joan Hunt 165
Jewish Unity for Multiple Parenting (JUMP) 172
The Law Reform Committee of the Bar Council 177
Mrs CA Maxwell 178
Mayor of London 180
National Family Mediation 181
National Family and Parenting Institute (NFPI) and others 183
National Youth Advocacy Service (NYAS) 185
Mr Kevin O’Reilly 187
One Parent Families 190
Karen Parsons 193
Planetary Alliance for Fathers in Exile (PAFE) 194
Refuge 196
Mr George Rutter 199
Shared Parenting Information Group (SPIG) 199
Mr David Thomas 199
Leonid Yanovich 202

Evidence received by the Joint Committee but not printed can be inspected in the House of Lords Record Office (020-7219 2333), e-mail HLRO@parliament.uk

NOTE:

The Report of the Committee is published in Volume I, HC 400-I, HL Paper No. 100-I.
The Evidence of the Committee is published in Volume II, HC 400-II, HL Paper No. 100-II.
Minutes of Evidence
TAKEN BEFORE THE JOINT COMMITTEE ON THE DRAFT CHILDREN (CONTACT) AND ADOPTION BILL
THURSDAY 24 FEBRUARY 2005

Present: Dundee, E Mr Clive Soley, (Chairman)
Gould of Potternewton, B Virginia Bottomley
Hooper, B Mr David Chidgey
Howarth of Breckland, B Ann Coffey
Nicholson of Winterbourne, B Jonathan Shaw

Memorandum by Resolution

INTRODUCTION

Resolution is an association of 5,000 family solicitors who are committed to practicing family law in a constructive, non-confrontational manner. Resolution solicitors subscribe to a Code of Practice, which has since been adopted and incorporated into the Law Society’s Protocol for family law cases. Resolution has been highly instrumental in changing the practice of family law from a branch of general litigation into a specialised area, encouraging the development of new ways of resolving family disputes, such as through mediation or collaborative practice, and encouraging practitioners to develop skills in dealing with complex emotional issues as well as developing their expertise in family law.

Resolution prepared a detailed policy paper on resolving contact disputes in the summer of 2004, Practical Steps in Co-Parenting. This sets out Resolution’s views in full. The following comments are specific to the draft Children (Contact) and Adoption bill, which the committee is considering.

1. The main concerns are at the continued absence of any reference to resources being made available for the otherwise welcome initiatives proposed in this bill. We endorse all that has been said about the desirability of the emphasis on the therapeutic and the educative aspect of the proposals. We are concerned that diversions may lead to further delays in an already delay ridden system as parents are directed or ordered to attend sessions. For the system to have any respect a Judge has to be able to direct a parent to a session taking place in days rather than weeks.

2. These facilities must be organised across the country or practitioners are going to avoid issuing in some courts leading to an over burdening of neighbouring courts.

3. The absence of any reference to the improvement of facilities for those hardcore of disturbed parents needing proper therapeutic and medical assistance (as recommended in “making contact work”) continues to be a real concern. These parents who take up a considerable amount of the court’s time will continue to do so and will not be deterred by anything proposed in this bill.

4. We continue to be troubled at the reliance upon the role of CAFCASS being expanded. There have been improvements in the performance of CAFCASS, particularly in the area of public law. There are however still significant delays for private law cases. Delays of 14-16 weeks for the production of a report is the minimum, much longer delays are reported in the South East. In Surrey CAFCASS needs 28 weeks to provide a report there being only 1.5 Children and Family Reporters available. At the Guildford County Court there are insufficient CFR’s available to offer mediation services at a first hearing. One cannot expect a system to have respect if any obstructive parent knows that they can rely upon built in delay of this nature. CAFCASS reports are not unnecessarily long documents. Judges have been asking for targeted reports for years. It is fanciable to presume that the existing CAFCASS staff can mop up the extra support services suggested by being diverted from their current duties. For any of these interventions to command respect, they must be court based and CAFCASS the preferred agency to deliver them. Quite simply CAFCASS will need to be properly resourced for this work.
5. We have concerns that a system of this nature may become rigid with parents being diverted into a limited number of services that are unlikely to meet their needs. Judges will need to have some flexibility in order to tailor what is available to a particular situation. The emphasis on parents being given information is a good one, and it must be delivered in a variety of ways, by different media, and in different languages. There must not be an over reliance upon only written information. It is too early to predict how valuable these information sessions will be and it would be advisable to pilot a number of models around the country. We note that the three early intervention pilots running at present do not have provision for a control group which was to be regretted. The existing pilot schemes will be the subject of a workshop sessions at Resolution’s annual conference on 11 to the 13 March and any information arising out of that will be forwarded to the committee.

March 2005

Memorandum by The Family Law Bar Association

1. As with our response to the Government’s Green Paper “Children’s Needs and Parents’ Responsibilities”, we welcome this opportunity to comment on the draft Bill.

2. Contact Activity Conditions and Enforcement Orders

The power to attach such a condition to a contact order derives from Section 11B(4). It imposes a requirement to participate on the individual against whom the order is made.

3. The new powers to enforce contact orders appear in Section 11G(3). They are not sufficiently explicit if the intention is that the court may visit with an enforcement order not just a failure to afford contact as directed, but also a failure to participate in the specified activity. That is easily cured.

4. We greatly welcome the court being able to impose an enforcement order of its own motion, without the necessity of the person in whose favour the order is made having to raise the default with the court.

5. The extended role of CAFCASS

We offer the same observation in terms of Section 11F(5). A contact order is made in the expectation that it will be obeyed. Too often the parent who is wrongly denied contact with his/her child feels defeated by the court process and the burden of, yet again, having to restore the matter to the court. These are responsibilities better undertake by an officer of CAFCASS.

6. Curfews

Some have struggled to see in what circumstances the making of such an order could be justified as “necessary to secure the person’s compliance with the contact order”—see Section 11H(1)(a).

7. The imposition of such an order is an interference with the individual’s right to family life under Article 8 of the European Convention on Human Rights. It may constitute a legitimate, proportionate interference with that right in circumstances where (for example) the parent in default insists on attending the home of the other, intent on sabotaging what the court has otherwise ordered should take place, or deliberately takes the children out for some family activity at the commencement (thereby frustrating the contact), but probably not otherwise. It might, on further reflection, also be a useful tool to prevent a parent “hanging around” when contact is taking place, thereby running the risk of sabotage.

8. The same observations, we feel, apply in relation to an order for the electronic monitoring of curfew requirements.

9. Adoption

Clause 7(3) of the draft Bill deals with the lifting of special restrictions in individual cases. We would merely comment that paragraph 40 of the Explanatory Notes (which do not form part of the Bill) refers throughout to a requirement of “exceptionality”. That is not mirrored in the wording of the sub-clause.

These proposals are not contentious.

22 February 2005
Examination of Witnesses

Witnesses: Mr Christopher Goulden, solicitor, Resolution, (formerly the Solicitors Family Law Association), Mr Philip Moor QC, Chairman, and Mr Anthony Kirk QC, Vice-Chairman, Family Law Bar Association (FLBA), examined.

Chairman: Welcome. I will introduce you in just a moment but I would like first to ask members to declare any interests that have not already been declared.

Baroness Howarth of Breckland: I am the Deputy Chair of CAFCASS, which is a fairly significant interest.

Q1 Chairman: I would also like people to know including those in the video conference room next door, that the full transcript of today’s session will be available on the website, on the Committee’s webpages, early next week. All details of members’ interests are also recorded on that website. May I now welcome our three witnesses, Mr Christopher Goulden, a solicitor from Resolution, Philip Moor QC, Chairman, and the Vice-Chairman Mr Kirk, from the Family Law Bar Association. Thank you very much for coming this morning. This is an important Bill. We are very anxious to see that these matters are legislated on, but we want to get it right, so your views and opinions will be very useful. Could I perhaps begin proceedings by asking whether you think the measures in the Bill that are designed to inform and facilitate contact will work.

Mr Moor: Yes, we support the measures. One point I was slightly surprised about is in the first section of the draft Bill which says that the section only applies where the making of the order is opposed. I was slightly troubled about that, because quite a few resident parents come to court and say, “Oh, I’m not opposing the order,” but you know there are going to be difficulties, and I would have thought it would have been easier if it just said: “This section applies in any family proceedings where the court is considering to make an order falling within subsection (2)” so that there cannot be a technical defence to get you outside that section.

Q2 Chairman: That is a very interesting point and presumably quite an important legal one. Am I right in making that assumption?

Mr Moor: Yes. There is a box you have to tick as to whether or not you are opposing the application and I foresee some tactical failure to tick that box.

Q3 Chairman: Would your colleagues agree with that?

Mr Kirk: Certainly that is right. Chairman, if the question goes a little further; in other words: Are there alternative and other mechanisms that we would ask you to think about in terms of enforcing contact orders? we certainly have one or two suggestions to make there. Could I advance one?

Q4 Chairman: We will come to the enforcement part of the Bill in a moment, but if you have something new to add, please do so.

Mr Kirk: Yes, in terms of ways of ensuring that contact might take place. I was looking at the Bill quite carefully and it carves out new and distinctive roles for officers of CAFCASS. For example, there is a large monitoring role in terms of working out whether or not parents are complying with contact activity directions and whether they are complying with enforcement orders. It is a monitoring and a reporting back to the court role but I wonder whether there is not scope here for, so to speak, extending and further embracing the concept of a Family Assistance Order. That, as presently drafted, is an order that lasts a period of six months, whereby an officer of CAFCASS—it is also open to a local authority officer—would meet with the parties specifically to advise, assist and befriend them. As presently drafted, the circumstances of the case have to be exceptional and all parties have to sign up to it; in other words, to agree to be advised in that way. But I thought a further role for a CAFCASS officer, and a rather more constructive one than simply reporting back to court on what has or has not been going on, would be working out there on the ground with parties and actively advising, assisting and befriend them with a view to helping them solve the problems.

Q5 Chairman: That is helpful. Let me say now that any suggestion of what else ought to be in the Bill in the way you are describing would be welcome. We have a degree of flexibility as to what we can recommend.

Mr Kirk: It is certainly something that I know Mrs Justice Bracewell, from whom you will be hearing later on this morning, very much thought was an excellent idea in quite an important case where she gave judgment last year (V v V). I am sure she will be able to help further with that.

Chairman: It would be helpful, with specific things like that, if you could write in to us with a more specific suggestion from your legal expertise. That would be useful at some stage, in addition to what you have already given us.

Q6 Baroness Howarth of Breckland: I was intrigued by that, as you would imagine. I was going to ask a different question, but perhaps I could ask a follow-on from that. In your experience do you find that some CAFCASS officers are in fact doing that on the ground and that it would be helpful if it were embraced in statute?
Mr Kirk: I think it certainly would. So far as the Bill is concerned, I was surprised to see that there was not some amendment there to the Family Assistance Order which specifically contemplated that.

Q7 Baroness Howarth of Breckland: I would like to follow on about mediation and to ask whether you think that compulsory mediation before parties resort to court, or even before they appoint solicitors, would be welcome in practice and lead to a quicker resolution of contact disputes.

Mr Kirk: I wonder, if I could be forgiven, if I again might answer that one. I also happen to be a qualified mediator as well as a practising barrister. To talk in terms of “compulsory mediation” really is rather a contradiction in terms, because mediation, as we all know, is a voluntary process which both parties have to come to. It is not about forcing a solution on to the parties; it is about getting them to think about what might be the best outcome for the children for whom they have responsibility. It can be incredibly useful, even in cases in which I have meditated where the parties are about to embark on bitterly contested High Court litigation, concerning such things as education, or whether a parent is going to move to live abroad with the children or not. I have even managed a modicum of success in mediation situations where they are in the middle of a case. So, provided there is willingness on the parties to engage, it can be a very, very useful tool indeed. We, I know, speaking on behalf of the Association, would welcome and do welcome the Government’s strong endorsement that mediation is a very, very important way forward for parties to be able to sort these matters out—but, regrettably, it can never be compulsory.

Q8 Earl of Dundee: The Government’s Green Paper on parental separation recommends a Family Resolution Pilot Project. What do we know about the success to date of such early resolution pilots?

Mr Kirk: I am going to be accused of monopolising this question and answer session, but I have done some recent research on that which may be of some assistance. The scheme started out in September of last year and is due to run for a period of 12 months as a pilot.

Q9 Earl of Dundee: It started in September, but where was it piloted?

Mr Kirk: In three centres: firstly, in Brighton; secondly, in Sunderland, the County Court and Family Proceedings Court there; and, thirdly, here in London, at the Inner London Family Proceedings Court. I am afraid the news I have to report is not desperately encouraging. I spoke yesterday to the district judge in Brighton who is in charge of the scheme and he was able to inform me that the scheme had been very, very slow to take off, and no so-to-speak “end-products” in terms of agreements had been brought in front of a court for formal endorsement despite the passage of already six months. Not every parent is qualified for the scheme in terms of the dispute they bring before the court. This is a matter that Philip Moor touched upon a little bit earlier in terms of the contra-distinction between a residence and a contact order. There are those parents who will make an application for residence, effectively as a tactic and a tool, when actually what they are seeking is a contact order at the end of the day. They bring a residence order application out of sheer frustration because they are not seeing their children. That sort of case, where you apply for a residence and/or contact order is bypassing the Family Resolution Pilot Project scheme because it does not fit within it. The application does not have the right hat: it has to be for a contact order, and a contact order and a contact order only. So that is unfortunate. The other point he made to me is this—and this is disappointing to have to listen to and to report to you: that the scheme will only accept, as it were, fresh starts, fresh applications: the first application for a contact order in any particular case. If you are going back to court on a repeat application, where one might have thought there was even more need for urgent intervention to bring things hopefully to an end, if you are making your second application for contact or your third, fourth, fifth or sixth, that will not be dealt with under the pilot project.

Q10 Earl of Dundee: In context, would it still be possible to turn a negative into a positive? If, as you say, the result so far is disappointing, at least, as you have just described to us, we know why it was disappointing. Could adjustments now be made so that it starts to be effective instead?

Mr Kirk: Absolutely. Those are some really quite vital adjustments to be made. That is why things have been very slow in Brighton—which is a large family court centre. But even more disappointing—I apologise for this—is the news that comes from Sunderland. Over the six months in which the scheme has now been in place there have been a total of five referrals, and five only: one from the Family Proceedings Court and four from the Sunderland County Court. From Sunderland and the outlying areas there is an awful lot of family work and family cases—there are a lot of very busy court centres up there—but just five over a period of six months does indicate that, even though people may be interested in the scheme, they are not following it through. Either that, or because of the same reasons that Brighton is experiencing: the residence/contact
application that cannot fit within this scheme, or, alternatively, a repeat application for contact.

Q11 Earl of Dundee: So, again, in a paradoxical way, the Sunderland example adds grist to the mill: it is quite clear that it has been unsatisfactory, therefore the message is that adjustments must be made. Who will make these adjustments? What process now can cause such adjustments to take place?
Mr Moor: It is only a pilot, so that obviously would give the opportunity—

Q12 Earl of Dundee: This may be only a pilot, but it is a pilot which is going wrong and which, therefore, will probably cause more harm than good if it is allowed to continue to go wrong; so somebody ought to put it right. I just wonder who has the power to do that or what process is relevant to make the changes.
Mr Kirk: I am not quite sure what the answer to that one is. We would have to go away and think about that and discuss it. I am afraid that is the answer to the question.
Mr Goulden: I think it is DfES’s pilot, so presumably it is for them to be keeping a watch on what is happening and taking the necessary steps.

Q13 Chairman: I suspect it is. I suspect, as with all pilot projects, you have to see it through in order to see what comes out at the end, and whether you change it or not en route is a difficult one.
Mr Goulden: But it is some time since it began, so—

Q14 Chairman: Could I just clarify a matter. Are you of the view that the courts should have the power to refer parties to mediation? Do you think that ought to be available?
Mr Goulden: It is already available, I believe, under the Family Law Act. I do not think it is used very often.

Q15 Chairman: Why not? Should it be perhaps something that is strengthened?
Mr Goulden: There is nothing wrong in a judge encouraging parties to mediate if that appears to be appropriate at the time. There is no reason why a judge should not make inquiry as to why they have not already mediated.
Mr Moor: In-court conciliation schemes are extremely important. I have personally found them to be very, very useful indeed—where that is done with the judge and a CAFCASS officer, on a without-prejudice basis at the very beginning of the case, to try to knock heads together and reach a sensible agreement. That is something that we very much support.

Q16 Ann Coffey: Part of the difficulty in early interventions is that, when you get to the point where people are before the court, there has been, before that, a period of time in which attitudes have probably been set—immediately after a break-up and before the parties get to their solicitors and to court—and then it becomes more difficult, of course, because people’s attitudes are set. Do you think that, instead of trying to build early intervention solely into the court process, we should be looking at something that could be done at a much earlier stage; for example, when somebody first comes to see a solicitor, which is the first point of contact?
Mr Goulden: If I may speak as a solicitor: the fact is that a lot of people put off seeing a solicitor, for perfectly good reasons, for as long as possible and so the situation can be entrenched by the time they get to the solicitor. But that is the solicitor’s job, to try to reverse that situation, and it is part of the Family Law protocol that you will consider with your client—and I believe solicitors do consider with their clients—the prospect of mediation, and it is something to be recommended in appropriate cases. So that does happen, in one sense.

Q17 Mr Chidgey: This question is related to Ann’s comments. It has been suggested that the welfare checklist in the Children Act of 1989 should be amended to include a requirement for the courts to have regard to the importance of sustaining a relationship between the child and the non-resident parent. Would you favour the inclusion of this measure in the Bill?
Mr Goulden: Yes.
Mr Moor: Yes.
Mr Kirk: Yes. I think at the moment we tend to take that as taken for read, but there is certainly no harm in spelling it out there, right at the very front of the Children Act.

Q18 Mr Chidgey: Could I develop that a little further. Mr Goulden, in your position here representing Resolution you have mentioned that there are 5,000 family solicitors who subscribe to your code of practice of promoting a constructive, non-adversarial approach to resolving family conflicts—which is very worthy and obviously to be welcomed—but I would like to test out with you how confident you are, or whether you are concerned, that that code of practice is not perhaps the writ that runs throughout the courts of the land. Too often one does hear in the family courts’ scene of solicitors talking of winning or losing the case. I would suggest to you that the welfare of a child should not be the subject of a legal dispute in terms of who has won or lost the case. It cannot really be in the interests of the child if that approach is adopted. I am rather concerned and
would like to know your views on how confident you are that your organisation gets the message across.

**Mr Goulden:** I think we are confident as an organisation that that message is getting across. A large number of the solicitors actually practising in family law are members of the organisation and certainly it is not approved of and is commented upon if people do start talking in terms of winning and losing. I practice almost exclusively in children law, in public law and private law, and I can honestly say that I do not come across very inappropriate conduct on the part of solicitors very often. I would be misleading you if I said it never happened, but certainly—and I do not only practise in Bristol, I also practise in other parts of the country—it is the rare occasion that I come across someone who is taking an inappropriately adversarial stance.

Q19 **Mr Chidgey:** Could I just take this a little further—and thank you for that answer. It is again about due process. It is the case, I understand—quite commonly the case—that in a dispute about contact one parent will be represented through legal aid and the other might not be, which of course does create a considerable imbalance in the quality of representation that the two parties have. Do you think that is fair? Do you think that in fact the process becomes part of the problem?

**Mr Goulden:** I would not accept automatically that it creates an imbalance in the quality. I think I am right in saying that about two-thirds of the members of my association still practice legal aid despite the fact that that is a very much smaller proportion of their income, as it were, and they are paid significantly less than their usual private rate. So it would not be right to say that someone represented on legal aid could not have good representation.

Q20 **Mr Chidgey:** No, you misunderstand me—in fact, I did not make myself clear. I am talking about cases where one party will be well represented through legal aid and the other party has no representation other than their own point of view.

**Mr Goulden:** I think that goes back to a matter of court management. Because the argument goes that the party with legal aid is able to “go all the way”, “go to the wire”, and all these sorts of expressions, and I suppose, yes, theoretically that is correct, but it should not be allowed to happen, and that is a matter down to the judge, to make sure that that does not happen.

Q21 **Mr Chidgey:** It is the case that somebody of the quality of your colleague Mr Kirk, with his great skill, as he has exhibited this morning, may well be in a case up against a parent with no legal skills at all.

**Mr Goulden:** It is a problem. Yes, it is a problem.

**Mr Moor:** There is no question, we have been very concerned about the various restrictions that have been imposed over the last few years on eligibility for legal aid. There was a document called *A New Focus for Civil Legal Aid* last summer, which, when we examined it quite closely, seemed to us simply to be further cuts.

Q22 **Mr Chidgey:** Should the Bill approach this?

**Mr Moor:** Certainly we very firmly advocate a wider scope for legal aid.

**Mr Kirk:** I appreciate the way in which you have put it, but you talk about a problem being presented if, for example—and almost 100 per cent of my practice is publicly funded—I am against somebody who does not have the benefit of representation at all. It is actually quite a privilege to take on that role, because you are there to assist that person, insofar as you can do so within the confines of your instructions, and to make sure that he or she is properly assisted by the judge. At the end of the day, if we do our job well—and I hope that we all do—it should not present the problems that one might think at first blush it does.

Q23 **Ann Coffey:** Following on the point I was making earlier: as you say, parents will put off going to see a solicitor, and, in the period between, attitudes may become entrenched. When people come to see you, what is your experience of how they have managed that immediate period after the breakdown of their relationships and talking to each other about setting up contact with children? What other agencies or people have they approached before they have approached you?

**Mr Goulden:** I suppose the obvious one that comes to mind is that they may well have been through a process with Relate. In those circumstances, Relate’s job is also to manage the break-up if they do not manage to bring them back together again, and the question of the children will come up there. Nothing else immediately springs to mind—unless they are of a religious persuasion and have had the counselling of a priest or something like that. I do not know. I cannot answer that question really.

Q24 **Virginia Bottomley:** Following those points raised about how the whole process is funded, those of us who are members of Parliament have frequently heard that there is a bitterness with the parent who is not legally aided, trying to take these matters through with another parent who may be legally aided, and they may perceive that they are seeking to extend the matter. Are there any general comments any of our witnesses would like to make about the degree to which mediation is or is not funded, the legal aid
funding issues, the degree to which the costs involved actually have a distorting effect on behaviours?

**Mr Moor:** There is another problem, of course, and that is the delays in the system, in not being able to get a judge. We all hope the cases will be sorted out sensibly—and the vast majority are—but, if you cannot sort a case out sensibly, you need to have a judge hearing the case quickly, because delay does not help, it just entrenches attitudes. The President has recently published a protocol for trying to get these cases on quickly. We all hope it works, but at the end of the day it depends on having the judicial manpower available.

**Q27 Jonathan Shaw:** Would you like to give the Committee an example.

**Mr Kirk:** Of a curfew?

**Q28 Jonathan Shaw:** Yes.

**Mr Moor:** There is another problem, of course, and that is the delays in the system, in not being able to get a judge. We all hope the cases will be sorted out sensibly—and the vast majority are—but, if you cannot sort a case out sensibly, you need to have a judge hearing the case quickly, because delay does not help, it just entrenches attitudes. The President has recently published a protocol for trying to get these cases on quickly. We all hope it works, but at the end of the day it depends on having the judicial manpower available.

**Mr Kirk:** It is a difficult one. When I first looked at the Bill, I thought: “Why on earth is it there?” but on reflection—and Philip Moor and I were thinking about this yesterday—I suppose you would want to impose a daytime curfew against—if I may take the case of a mother—a mother who is causing problems over contact. She is who decides to follow the father and the children on their day out to Whipsnade Zoo or wherever they happen to be going, lurking in the background and causing problems. That is quite a common scenario, and it makes things very, very difficult for the children and, in my example, the father. So there is that possibility. There is the other example of a case where you have a regime of overnight-staying contact that has started and the mother is dead against this and actually turns up at the house, saying, “I want to check that he or she is all right—they have never been away from me for this long and I am taking them home.” So you could stop it that way. The third example that we could think of, if I could remember what it was now—

**Mr Moor:** The third example is where the mother says, “They’ve got to go to a football match in the afternoon,” and she is not present in the house when dad comes round to collect them for the contact, so you make the curfew order to force her to be in the home.

**Q29 Jonathan Shaw:** So the curfew order is implemented in order to facilitate the contact.

**Mr Moor:** The contact, yes.

**Q30 Jonathan Shaw:** Not as a punishment.

**Mr Moor:** Not as a punishment.

**Q31 Jonathan Shaw:** It is not, “Right, you are not going out on Saturday night with the girls”.

**Mr Moor:** No.

**Mr Kirk:** It has to be implementation necessary to secure the person’s compliance with the contact order.

**Mr Moor:** There is one point I do wish to make, and that is: what is the standard of proof? We assume that particularly, for example, the curfew and possibly also the electronic surveillance, that it is going to be “necessary to secure the person’s compliance with the contact order”. So you are going to have to think to yourself: “If I am going to impose a curfew in this case, am I justified in doing it? Can I say that the imposition of that curfew is objectively necessary to secure a person’s compliance with the order?”.
Mr Moor: The dilemma is that the mother says, “I am very keen that this contact should happen. It is not me who is breaking the order; it is the children who do not want to go” and the judge has to be satisfied—and, in my view, on the earlier sections of the Act, satisfied on the balance of probabilities—that there are problems and therefore these directions should be made; whereas, under the enforcement section, I think the judge would have to be sure that there had been the breach.

Q33 Jonathan Shaw: So the curfew is not a punishment because it is to facilitate the contact. Unpaid work—that is a punishment, is it not? Mr Moor: Yes.

Q34 Jonathan Shaw: In what circumstances might that be appropriate to help facilitate contact? Mr Moor: To make it clear to somebody that if you do not comply with the order you are going to have to go and work in the local community.

Q35 Jonathan Shaw: Okay, that is at one end of the menu of options at the top of the scale. We know that there are some excellent mediators around—I am sure Anthony Kirk is an excellent mediator—and there are some excellent CAFCASS officers, but do you think the judge should take account of the fact that perhaps therapeutic and counselling services in an area are weak and not offered to parents? Because we can quickly see a scenario, where you have weak counselling services and therapeutic services in an area and one parent says, “We’ve tried this and it’s still not working” that you would then end up with graffiti being scrubbed off the walls as a consequence. What about that, the judge taking account of the level of services within a particular area? Mr Kirk: Quite likely.

Q36 Jonathan Shaw: That is quite a departure, is it not, in terms of just looking at the law? Mr Moor: Yes.

Q37 Jonathan Shaw: How are you going to make that judgment? Mr Goulden: It is actually very difficult. If the measures are not available to a particular parent, maybe through a disability or maybe because of transport difficulties, it is a problem of lesser importance. The facility might be there but it might not be able to be accessed by that particular parent. Does that parent then fast-forward to enforcement? That is of very great concern.

Q38 Baroness Gould of Potternewton: I wonder if I could ask one or two questions on the practicalities, on how this would actually work. For instance, you highlighted daytime curfew and overnight curfew, how would the judge know which curfew to impose? You could not have a 24-hour curfew, could you? Mr Kirk: No, you cannot.

Q39 Baroness Gould of Potternewton: How would it work in practice? Mr Kirk: You are quite right, but it is also, if I may say so—and I will answer that question—subject to a limitation or restriction, as appears in the schedule, that you cannot impose a curfew on any more than 12 separate days or 12 days within a period of six months. So it is only a limited, so to speak, remedy, to try to ensure that the contact takes place. But, to answer your question, I think you have to look at the problem that has arisen. Is it a mother who has, to use Philip’s example, taken the children out to a football match, or is it the mother who turns up at 11 o’clock at night saying, “They’ll never go to sleep, I’ve got to take them home” and that sort of thing? You then, I presume, have to decide: “Is it a daytime or a night-time curfew? What is the evil that I am trying to cure by imposing this curfew.” But I certainly had not read it as a punishment.

Q40 Baroness Gould of Potternewton: No. I understand that, but if one were in that position and it was clear that an overnight curfew was put into place because that was with the expectation of the way the mother would behave—and we have used mother in this instance—would that person not then change their practice, so that that curfew would become irrelevant? Mr Kirk: Quite likely.

Q41 Baroness Gould of Potternewton: So is what we have in the Bill the right approach in order to facilitate contact? Mr Kirk: You might keep your fingers crossed that they would change their behaviour and change it for the better!

Q42 Baroness Gould of Potternewton: Right.

Mr Kirk: But in a minority, certainly, of the cases that I have come across, a parent who is really, really, utterly determined to frustrate contact can, at the end of the day, or will at the end of the day, whatever powers the court has, succeed—short of the ultimate power, which I do not regard as imprisonment, and that is saying, “These children will no longer live with you, they will live with the other parent”.
Q43 Baroness Gould of Potternewton: Do you think the Bill sufficiently defines who is going to take the responsibility for monitoring all this and checking it to make sure it is in fact happening?

Mr Kirk: Well, it has all landed on the CAFCASS officer, has it not?

Chairman: That we will come to this afternoon.

Q44 Virginia Bottomley: Is there a better word than “curfew”. “Curfew” is a very punitive word.

Mr Kirk: It is not nice, is it?

Q45 Virginia Bottomley: Could you propose an alternative expression?

Mr Kirk: We will go away and think about that, certainly.

Q46 Chairman: Before we move off enforcement, could I clarify two things. The Bill requires the court to take into account the welfare of the child. First of all, do you think that clashes with the principle that the child’s interests are paramount? And, secondly, with the human rights position on tagging, for example? Could you deal with those two issues quickly.

Mr Moor: We thought that it was human rights compliant, but I do think it has to be the criminal standard of proof.

Q47 Chairman: And is there a clash in the law, between the requirement the court takes into account for the welfare of the child when dealing with enforcement, set against the expectation that the child’s welfare is paramount? Is there a clash there or not?

Mr Kirk: I do not think there is. Of course, you take into account the child’s welfare, but, at the end of the day, if you have made a contact order which is not being obeyed—in making that order you have decided that that order is putting the child right at the top—if that contact is going to be frustrated, it has to be sorted out and put right. But of course there must be a limited opportunity, in terms of what you are doing to enforce it, to look at the welfare of the child: Is this going to impact—

Q48 Chairman: And you are satisfied there would not be a problem.

Mr Kirk: I do not think there is. It is the same situation we get at the moment, sadly, where you have a judge facing the question—and we will take the case of the mother, as we have done—“Am I going to send her to prison? The welfare of the child—of course you look at that, and you think about that, because it is the last thing you want to do, to punish a parent in that way.

Q49 Mr Chidgey: And other children there may be in the family.

Mr Kirk: Absolutely. But at the end of the day you are enforcing a contact order. You have decided it is absolutely paramount, of paramount of importance, that that child should see the other parent: “Here is an application to commit, what am I going to do with it?”.

Chairman: Thank you for that. Could we move finally and fairly quickly to adoption. You will know that the issue in the Bill here is very tightly defined: it is a very small part of adoption.

Q50 Baroness Hooper: Since the Department of Education and Skills have suggested that the clauses in the draft Bill on foreign adoption are likely to be uncontroversial, we nevertheless feel we would like to raise the question with you and ask if you feel the provisions cause you any concern or if you feel they should be amplified in any way.

Mr Moor: They are uncontroversial so far as we are concerned. We certainly support them. I did have one small, minor point, although I was not completely sure whether I was correct or not. It does seem to impose a criminal offence if you have brought a child into this country in breach of certain conditions that the Secretary of State has imposed, whereas, if you have simply brought a child in from a country in which there is a blanket ban, that did not seem to be a criminal offence. That seemed to trouble me. I did not think that that was fair.

Baroness Hooper: That is very helpful. Thank you.

Q51 Chairman: Could I say, in thanking you, that if there is anything you feel is very, very important that is missed out, I would ask you to write to us and suggest that to us. If there are any other issues that we have not covered, again feel free to write in to us. I would like to thank you very much for your help this morning.

Mr Kirk: We will certainly come back to respond to Mrs Bottomley’s request for a better description of a curfew.

Chairman: Yes. Thank you very much indeed.
Supplementary memorandum by the Family Law Bar Association

“During the evidence session Virginia Bottomley commented on the fact that a “curfew requirement” was not a terribly happy expression within the context of family law. We agree and so did the judiciary present. The suggestion made by Mrs Justice Bracewell that a “restriction requirement” is a far better expression, is one with which we agree.”

Memorandum by Dame Elizabeth Butler-Sloss and Mrs Justice Bracewell

1. At the oral evidence session of the Joint Committee on the Draft Children (Contact) and Adoption Bill on 24 February 2005 the Committee requested a written note on what we considered would improve Family Assistance Orders (“FAOs”).

2. We were dismayed to read that provisions relating to FAOs were not included in the draft Bill. Problems with the FAO scheme have been identified for some time and we consider that reform is long overdue. It would appear that the draft Bill is the perfect legislative vehicle to make the reforms.

3. Section 16 of the Children Act 1989 introduced FAOs in order to provide social work assistance to families experiencing difficulties during a relationship breakdown, in particular, where there was disagreement over the future care of a child or children. FAOs are the only order in private law proceedings where social work assistance can be provided. We consider them to be a valuable tool in a difficult area of family law, but that they could be much improved to realise their full potential.

4. Despite the powers to make a FAO we consider there are at least four main difficulties with the current legislation and how the scheme is administered:

   (a) The FAO lasts only for six months. It is unrealistic to expect that the problems which have led to the making of an FAO can be resolved within this short timeframe.

   (b) Every party has to agree to the order being made. If one party does not agree to the order, for whatever reason, and whether or not justified, the order cannot be made.

   (c) The FAO is generally allocated to Local Authorities, many of which do not give the orders sufficient priority, and in some cases may refuse to implement them.

   (d) The Home Office has not allocated adequate funding to administer the scheme.

5. It has not been the practice of social services to deal with a child unless the child is an infant or unless there has been a section 37 order (or very occasionally a section 7 order because social workers have had prior dealings with the family).

6. We consider that:

   (a) The FAO should not be limited to six months, but rather, should be open ended so as to deal with a case sufficiently.

   (b) If the court considers a FAO is justified it should be able to make the order whether or not a party objects.

   (c) The FAO should in practice be directed to CAFCASS, and only exceptionally to a Local Authority. Given CAFCASS’ extended role and responsibilities in private law matters it would be best placed to carry out such orders.

   (d) Sufficient funding should be provided to ensure the orders are effective.

   (e) Exceptional circumstances as required by section 16(3)(a) of the Children Act 1989 should be repealed (see “recommendation 18” in paragraph 9 below).

7. We consider that by making FAOs more effective this may reduce the need to use the enforcement provisions and order more punitive measures, such as community service, at a later stage.

8. We would endorse the recommendations of the Children Act Sub-Committee of the Lord Chancellor’s Advisory Board on Family Law contained in its report of August 2002 entitled “Making Contact Work” and have provided you with a copy of chapter 11 of their report, which deals with FAOs. In particular we agree with recommendations 18 and 19.
9. **Recommendation 18**

The Government should legislate to make the changes required in order to make Family Assistance Orders effective. We support Family Assistance Orders as potentially a very useful facility, if operated by CAFCASS and as part of a planned specific programme of court led intervention. They should cease to be directed to local authorities but should be directed to CAFCASS. The time limit of six months should be removed. The phrase “exceptional circumstances”, which has little meaning, should be repealed, as should the ability to refuse to consent to the making of an order.

10. **Recommendation 19**

We also recommend that CAFCASS be asked to prepare proposals in relation to specific programmes which could be operated under a Family Assistance Order, including “educational” programmes for parents, packages of support in monitoring the implementation of contact agreements, support for indirect contact and direct assistance to children.

11. Recommendation 19 is to some extent realised in clauses 11A and 11B of the draft Bill, which we commend.

**CHAPTER 11**

**FAMILY ASSISTANCE ORDERS**

**THE QUESTIONS WE ASKED**

11.1 Do you regard the Family Assistance Order in its current form as having any use in facilitating contact?

11.2 How could family assistance orders be used more effectively?

11.3 If your answer to question 11.1 is “no” would you favour its abolition, or would you favour an amendment to the Children Act to make it more effective? If the latter, what amendments would you wish to see?

**Question 11.1**

Do you regard the Family Assistance Order in its current form as having any use in facilitating contact?

11.4 The responses to this question were surprisingly evenly balanced. There were 100 responses, of which 49 were “yes” and 51 “no”.

**Question 11.2**

How could family assistance orders be used more effectively?

11.5 A number of responses pointed out that the Home Office has never allocated funds for the operation of Family Assistance Orders, and accordingly they received a very low priority. Furthermore, the local authority, as the Statute was currently framed, could simply refuse to implement the order. There was a general feeling that these orders were better operated by CAFCASS, as part of a specific programme of planned intervention. However, they needed to be more open-ended (ie should last more than six months) and should not require...
the consent of the parties. Inevitably, these improvements meant altering the statute, and this was worth doing, since the concept was a sound one.

11.6 We were fortunate to have the benefit of responses from a number of people and organisations who had undertaken research into Family Assistance Orders. The findings of the Joseph Rowntree foundation pointed to an absence of accurate statistics as to the number of orders made; an absence of proper funding; inconsistency in the approach to the formulation of policy documents about Family Assistance Orders; a lack of consensus as their use; a lack of agreement over the definition of “exceptional circumstances”, and a lack of agreement as to how involved children should be. They concluded:

... the usage of Family Assistance Orders is confused and contradictory. Much time and effort is involved in working with these orders and yet the process is fraught with difficulty, from orders being recorded incorrectly through to policy and practice issues. These would seem to require some careful thought if courts and service providers are to operate with a shared perception of the FAO. The many issues raised by this study have potentially far-reaching implications for the review of support services for the family courts which is currently being undertaken.

11.7 Dr. Trinder had made a small study of Family Assistance Orders and concluded that they could work. She did not favour abolition, but argued that it would be helpful if the “exceptional circumstances” condition were removed and if the court could compel participation. It would be extremely helpful, she said, to issue more explicit guidance on the framework for a therapeutic service (preferably under the auspices of CAFCASS), in which case it would be essential for CAFCASS to develop standards and a protocol for the service.

Question 11.3

If your answer to question 31 is “no” would you favour its abolition, or would you favour an amendment to the Children Act to make it more effective? If the latter, what amendments would you wish to see?

11.8 For the reasons given in the responses to the previous question, the majority favoured amendment to the Act, to include the matters mentioned in the previous answer. The revised order should form part of the court’s plan for the family and the child, and should be operated by CAFCASS.

Conclusions

11.9 These are conclusions with which we agree. We see Family Assistance Order as potentially a very useful facility, if operated by CAFCASS and as part of a planned and specific programme of intervention. In our view a number of changes are required in order to make Family Assistance Orders effective. They should cease to be directed to Local Authorities, but should be directed to CAFCASS. The time limit of six months should be removed, and should be replaced by a time-frame identified by the court as being required for the particular task being undertaken and needs of the particular case. We do not think such orders should be open-ended. The phrase “exceptional circumstances”, which has little meaning, should be repealed, as should the ability to refuse to consent to the making of an order.

11.10 We also recommend that CAFCASS be asked to prepare proposals in relation to specific programmes which could be operated under an Family Assistance Order, including “educational” programmes for parents, packages of support in monitoring the implementation of contact agreements, support for indirect contact, and direct assistance to children.

11.11 The scope for the use of such orders is, we think, substantial. They could, appropriately operated, provide the focus for necessary work with the family concerned by CAFCASS after a contact order has been made; they could also provide a basis for intervention to implement court orders in intractable cases, as an alternative to other, more draconian, methods of enforcement.

11.12 These proposals will, of course, require a change in the Children Act 1989. However, much of the work to clarify the potential of a revitalised Family Assistance Order can be achieved without waiting for legislative change—for example, the work recommended in paragraph 11. 10.
COMMENTS BY LORD JUSTICE WALL ON THE CHILDREN (CONTACT) AND ADOPTION BILL

1. You have asked me for my comments on the Children (Contact) and Adoption Bill. I am very sorry I cannot accompany you to the Select Committee. I have some comments on the details of the Bill, but for present purposes propose to make general comments only.

2. I am pleased that the government has accepted a number of the recommendations contained in Chapter 14 of the report of the Children Act Sub-Committee (CASC) of the Lord Chancellor’s Advisory Board on Family Law, Making Contact Work. For ease of reference, and as an aid to what follows, I attach our key recommendations in this area (paragraphs 14.51 to 14.55). For reasons which will rapidly become apparent, I also attach Chapter 11.

3. The concepts of the “contact activity direction” and the “contact activity condition” combined with “enforcement orders” appear to provide the framework for the two stage approach to problematic contact arrangements which CASC identified in paragraph 14.53 of its report. I do, however, have a number of concerns.

FAMILY ASSISTANCE ORDERS (FAOs)

4. I am disappointed that the government does not seem to have used the opportunity of the Bill to implement a much needed reform to FAOs, which can be made under section 16 of the Children Act 1989. We devoted Chapter 11 of Making Contact Work to the reform of these orders. They currently do not work because; (a) they have never been properly funded; (b) local authorities can refuse to operate them; (c) they are limited to six months; and (d) everybody involved has to consent to an order being made.

5. There is, however, no doubt whatsoever in my mind that, addressed to CAFCASS, FAOs are potentially a useful facility as part of a planned and specific programme of intervention in difficult contact case:—see Making Contact Work paragraph 11.9. You will also see that in paragraph 11.10 we recommended that CAFCASS be asked to prepare proposals in relation to specific programmes which could be operated under FAOs.

6. I can see no reason why our recommendations in relation to FAOs have not been implemented.

THE ROLE OF CAFCASS

7. If I am wrong and the government does intend to include FAOs in the Bill, this leads me to my second concern, which is the role which the Bill envisages for CAFCASS—see paragraphs 38 to 41 of the Regulatory Impact Assessment. My concern has two main aspects. The first is that I do not perceive CAFCASS’ role in the facilitation of contact as one only of monitoring. I perceive its role as both facilitative and participatory. If the government wants to get difficult contact cases out of the court system, one of the major agents of reform must be CAFCASS. It will be CAFCASS who will operate the FAOs: it will be CAFCASS which works with the subject children and the family to broker agreements and address the issues which arise. CAFCASS must be permitted to play a greater role than is envisaged in the Bill.

FUNDING

8. The second limb of my concern is funding. I was very concerned to read in paragraph 39 of the Regulatory Impact Assessment. that “it is anticipated that no additional resources would be needed” for the reasons given in the balance of that paragraph. The Government needs perhaps to be reminded that its assertion that the creation of CAFCASS would be “resource neutral” was not only seriously wrong, but a significant factor in the substantial difficulties which CAFCASS encountered in its early stages, and from which it is, to a substantial extent still suffering. As I have said many times, the active participation of CAFCASS in the facilitation and enforcement of contact orders is crucial to the success of the measures proposed. CAFCASS must be properly funded to do the work. I find it quite extraordinary that in such a critical area as the protection of children from the damaging effects of disputes between their parents CAFCASS is denied the resources which would enable it to take on the expanded role which is so necessary.
THE AVAILABILITY OF CONTACT ACTIVITIES

9. Clause 11E of the Bill identifies contact activities. It is an obvious point, but as CASC said in paragraph 14.54 of Making Contact Work, the activities must be available. It is no use the courts having the power to refer parents to activities if the activities are not available. I would like a reassurance that such facilities will be available, and what steps the government is taking to ensure that they are. It is, for example, of the utmost importance that the local judiciary are aware of the facilities in their particular area.

REFERENCE OF A PARENT FOR PSYCHIATRIC OR PSYCHOLOGICAL HELP

10. I am disappointed that this has been omitted from the Bill. I do not know why.

ENFORCEMENT

11. I do not see the purpose of electronic tagging, and find it difficult to envisage circumstances in which it would be used. Who is to be tagged? And in what circumstances? I anticipate that judges would be reluctant to use it. Equally, I find it difficult to relate contact orders to curfews.

I hope this is of some use. Please feel free to use it in any way you wish.

17 February 2005

KEY RECOMMENDATIONS FROM MAKING CONTACT WORK

14.51 In our view what is required is a range of options to be available to the court on the application of one of the parties (or CAFCAS, or the court of its own motion) designed to assist the implementation of an order which is not being obeyed. The range of options needs to be sufficiently flexible to address the problem, and the options themselves need to be available. There is no point, for example, directing a parent to attend a parenting class if the facility is not available.

14.52 There needs, accordingly to be a two pronged approach. Firstly, the range of powers which the courts are likely to need should be defined. Secondly, in so far as they are not available, the facilities required to implement the requisite court order must be put in place.

14.53 The should also, in our view, be two different options, or two stages in each case. The first will be essentially non-punitive. The resident parent could, for example, be directed to attend an information meeting, or a parenting programme designed to address intractable contact disputes or required to seek psychiatric advice. If that did not work, and the contact order remained unobeyed, the court could impose an order with a penal sanction, such as community service or regular attendance at parenting classes. Any question of fines or imprisonment for any further breach would then genuinely be an issue of last resort.

14.54 As we have already said, it will be necessary for the resources to which parents will be referred under these proposals to exist. CAFCASS is the obvious source, as they themselves indicate. But resources outside CAFCASS will also be required, and it is for that reason that we recommend the two pronged approach. Some programmes already exist within the Criminal Justice System, but in our view programmes designed to require parties to address the issue of contact between their estranged partner and their children need to be specifically devised for that purpose.

14.55 The powers which the courts need, therefore, are, we think, essentially the following:

   (1) the power to refer a defaulting parent in a contact to a variety of resources including information meetings, meetings with a counsellor, parenting programmes/classes designed to deal with contact disputes;

   (2) the power to refer to a psychiatrist or psychologist, (publicly funded in the first instance);

   (3) the power to refer a non-resident parent who is violent or in breach of an order to an education programme, a perpetrator programme;

   (4) the power to place on probation with a condition of treatment or attendance at a given class or programme;

   (5) the power to impose a community service order, with programmes specifically designed to address the default in contact; and

   (6) the power to award financial compensation from one parent to another (for example where the cost of a holiday has been lost).
Examination of Witnesses

Witnesses: Dame Elizabeth Butler-Sloss, President, and Mrs Justice Bracewell, Judge, the Family Division of the High Court, examined.

Q52 Chairman: Good morning, Dame Elizabeth Butler-Sloss and Mrs Justice Bracewell. Thank you very much for coming along to the Committee today and giving us your time. You will have had the advantage of hearing some of the last session, I think, which is also helpful. If I may begin, in what ways do you consider the proposals in this draft Bill will improve the current law? Or—while you are at it, I suppose—make it worse?

Dame Elizabeth Butler-Sloss: Both of us are very enthusiastic about it. I have been campaigning with the DIES for some time, and the DCA, to have some real enforcement for the judiciary in these difficult cases. We have three possibilities in the present law: to fine a mother or father (and the minority of fathers are as difficult as the majority of mothers who tend to have care of the children—and it is a tiny minority of parents who behave like this, but they are very difficult to manage). A fine is a waste of time, because virtually nobody has any money. The second alternative is prison—and that must be the last resort, because it is not a good idea to put the carer of the child inside if you can avoid it, and, secondly, the carer is likely to say to the child, “Daddy has sent me to prison. You don’t want to see a daddy who sends me to prison, do you?” so it does not actually improve the atmosphere. The third possibility—which we do from time to time, and Mrs Justice Bracewell has done relatively recently—is to hand the child to father. But that can only be done with a child who already knows the father: you cannot just transfer a child who does not know the father from a mother whom the child loves. We are stymied at the moment, so we are enormously enthusiastic about the two stages of the Bill. One is that we can provide for information, therapy, any other thing that might arise where there is a facility, and, secondly, with that tiny minority, that we could enforce either by a restriction on time—and the alternative to “curfew” might be “restriction”, which is what Mrs Justice Bracewell was whispering to me—or by, where it is necessary, community service, or by a requirement that they go to an information session (if it is there) rather than an encouragement. And I would have thought, even at the second stage, we might try to use the proposals of the first stage, but with increasing force. But, if I may say so, what is absolutely necessary are resources. Seeing Baroness Howarth here, knowing that she is on the CAFCASS board, it is absolutely dependent not just on CAFCASS monitoring but on CAFCASS facilitating—CAFCASS there, in at the beginning, helping the family along, helping the child, helping the recalcitrant parent to understand that the child has a right to know the other parent.

We do not have those resources. We also need resources for therapy, resources for information sessions—which are not necessarily CAFCASS. But, if there is not some money put there . . . If I may say to the Committee, the money is crucial to the success of this Bill.

Mrs Justice Bracewell: Could I just add to that—I think it is an important point—that it will be very important for any judge or magistrate to know what the various options are within the neighbourhood that are available, but it is of crucial importance that they are available here and now. It will not be helpful at all to be told, “Well, we can’t do anything until four weeks on Monday because we don’t have the facilities, the resources, the staff” We need to be able to say, “Well, you must attend this particular programme of counselling”—or whatever—“on Wednesday evening, and I want the case back on on Thursday to know how it has gone and what progress we are making” Otherwise we will build in more and more delay, and that would not work.

Q53 Chairman: That is a very important point. I want to move on to the enforcement issues generally shortly, but, on this question of mediation, do you think the courts need more powers to push, if you like, people towards mediation? Or do you just think that would be counterproductive?

Dame Elizabeth Butler-Sloss: I would like the power to push them. Also I would like the power to push them to therapy to a greater degree, particularly to what is marvellous—other thing that might arise where there is a facility, some medical assessment. We know, of course, you cannot just transfer a child who does not know the father: you do not want to move on to the enforcement issues generally secondly, the carer is likely to say to the child, “Daddy has sent me to prison. You don’t want to move on to the enforcement issues generally . . . If I may say so, what is absolutely necessary are resources. Seeing Baroness Howarth here, knowing that she is on the CAFCASS board, it is absolutely dependent not just on CAFCASS monitoring but on CAFCASS facilitating—CAFCASS there, in at the beginning, helping the family along, helping the child, helping the recalcitrant parent to understand that the child has a right to know the other parent.

Q54 Chairman: CAMHS?

Dame Elizabeth Butler-Sloss: CAMHS is the—

Q55 Virginia Bottomley: Child and Adolescent Mental Health Service.

Dame Elizabeth Butler-Sloss: Thank you very much. That is very, very valuable for the child, but the adult services are inadequate for the problems. And who is going to pay? There are huge resource implications, and I have to say, reading the explanatory notes, I was astonished to see it was suggested this draft bill was resource neutral.

Q56 Mr Chidgey: May I ask a supplementary. You will have heard my earlier comments concerning the interaction of the legal system with this particular issue, and, by nature, our system is adversarial. I
would like to have your opinion, having heard my previous questions—to save time, I will not repeat them—whether you feel the legal system and the way we approach these cases is the most appropriate. You have talked of mediation. By definition the courts are about win and lose, as I mentioned earlier, and there are vested financial interests in the two sides. Is there a better way of doing this?

Dame Elizabeth Butler-Sloss: I think we start with a very good Green Paper and White Paper on parental separation. I think we are suddenly moving into a possibility of a new culture. I have absolutely no doubt that the Solicitors Family Law Association that is now called Resolution and the Family Law Bar Association—who basically are the majority of the lawyers dealing with these cases—have absolutely as the fundamental concept of their work the welfare of the child. I am incredibly impressed—and I think Joyanne would be equally impressed—over the years at the dedication of lawyers to try to settle these cases. Of course there are rogue lawyers—everybody has those—but it is usually from outside the in-group that do the majority of the work. I cannot tell you how much I respect the work of the barristers and solicitors in this field—and I am now talking of being a sort-of judge for over 25 years—and it has got increasingly good. FAIns, which nobody has referred to—Family Advice and information networks—is this process in which a certain number of solicitors are engaging, where they are diverting people from the courts immediately to information sessions, and this is excellent. The parenting plan: I have agreed with Lord Filkin that his new parenting plan which is coming out—it is just being redrafted—will go to any applicant for any contact or residence order, and the respondent to such an application will also be able to say, “Do you want to go down this road? If you do, we will file the application in the Sunderland County Court. If you don’t want to do it, we will file it in an adjoining area where we do not have to do this.” We are rather disappointed, because it is plain that the scheme is not being used as we anticipated it would. Of course you have to take out from the scheme those cases where serious abuse, whether domestic violence or sexual abuse, is alleged. That has to be dealt with on a finding of fact. Certainly repeat applications need to be included and Lord Filkin has that very much in mind at the moment. But one of the difficulties is that some of the parents are refusing to take part because it is not compulsory and they are saying that it is not convenient for them to go to information meetings and to see videos and to have discussion groups on an evening between seven and nine and they are complaining about it and not turning up. The other problem is that we rather suspect that solicitors are giving their clients the option and saying, “Now, do you want to go down this road? If you do, we will file the application in the Sunderland County Court. If you don’t want to do it, we will file it in an adjoining area where we do not have to do this.” And we suspect there is not quite the enthusiasm among the solicitors that we had hoped for.

Q57 Earl of Dundee: The Green Paper on parental separation recommends a Family Resolution Pilot Project. What is your view on that kind of expedient?

Dame Elizabeth Butler-Sloss: Mrs Justice Bracewell is on the Advisory Committee, which is one of the reasons I brought her.

Mrs Justice Bracewell: We are rather disappointed, because it is plain that the scheme is not being used as we anticipated it would. Of course you have to take out from the scheme those cases where serious abuse, whether domestic violence or sexual abuse, is alleged. That has to be dealt with on a finding of fact. Certainly repeat applications need to be included and Lord Filkin has that very much in mind at the moment. But one of the difficulties is that some of the parents are refusing to take part because it is not compulsory and they are saying that it is not convenient for them to go to information meetings and to see videos and to have discussion groups on an evening between seven and nine and they are complaining about it and not turning up. The other problem is that we rather suspect that solicitors are giving their clients the option and saying, “Now, do you want to go down this road? If you do, we will file the application in the Sunderland County Court. If you don’t want to do it, we will file it in an adjoining area where we do not have to do this.” And we suspect there is not quite the enthusiasm among the solicitors that we had hoped for.
Q59 Earl of Dundee: Connecting what the last witnesses said to what Mrs Justice Bracewell said a moment ago, if the early intervention is not working should not this Bill contain some power of coercion? 
Mrs Justice Bracewell: Yes, I think that is right. 
Dame Elizabeth Butler-Sloss: I cannot see actually why you could not require every single parent who is making an application because they could not settle their children’s affairs, to go to an information session before they ever got to the court. If you did that, it would be the preliminary to what is in this direction or condition. I believe myself that you have to go on trying to settle these cases to the very last day—and we are not in a world where you either settle or you fight. There is not a judge in the country—or very few experienced family judges—who do not try to settle the case all the way through, at every point saying, “Would you not be able to agree about this? Go out and talk about it now”. 
Mrs Justice Bracewell: It is very important to front-load, if I can put it that way, the earlier aspects of encouraging people to do what is best for their children, as opposed to the end of the process, enforcement, which we hope to use very rarely. We want all the emphasis to be at the front end.

Q60 Baroness Gould of Potternewton: I would like to pick up a point made by Mrs Justice Bracewell in respect of when violence has taken place. This might be a simple question, but I am not sure. Do you think that the Bill as it stands is sufficiently robust to take into account the abuse and violence that has taken place in the 2 per cent of cases where it does occur? 
Dame Elizabeth Butler-Sloss: You would not do this, you see: you are not going to enforce an order for contact. You will not make an order for contact unless you are quite satisfied that the allegation of violence is either not proved, or alternatively it is the sort of violence that has absolutely no effect on the welfare of the children. If a father has been consistently violent—and the majority are fathers, although there are some mothers I have to say—to the mother in the presence of the child, the contact arrangements have to be extremely carefully organised, and it may well be the father does not get contact. I had one case where the father nearly cut the mother’s thumb off, and there was blood everywhere in the kitchen; and although it was a one-off, and he was otherwise a good father but he went completely berserk on one occasion, the child could not take it because she could remember her mother covered in blood; so that child did not see the father.

Q61 Baroness Gould of Potternewton: I agree obviously that that should be the position, but I ask the question because there is evidence that that is not necessarily the position today. I am suggesting that— 
Dame Elizabeth Butler-Sloss: We have not come across this evidence. We are told by various women’s organisations anecdotally of situations where perhaps a judge has made an order in relation to contact. We are asking for the details, because I will go round and ask the judges myself, “Why did you make such an order?”. We cannot pin down a single case. If we could, I will deal with it.

Q62 Baroness Gould of Potternewton: That is very helpful. Thank you very much. 
Mrs Justice Bracewell: We have provision for fact-finding in these cases, so we know the basis on which we are judging whether or not contact is for the welfare of the child.

Q63 Baroness Howarth of Breckland: We are talking about whether the child’s welfare is paramount, and I know from sitting in many of the courts that that is very much the focus. Clause 11G(9) inserted by the draft Bill apparently attaches lesser importance to a child’s welfare in the current provision of the Children Act, by requiring the court just to take into account the welfare of the child concerned. Do you think there is a conflict? 
Mrs Justice Bracewell: I do not, because there is a public policy element. Once an order has been made, then the court has a public interest in seeing that that order is enforced. Obviously, you do take into account the welfare of the child, but not to be paramount, and there are many occasions, many other applications in which welfare is not the paramount consideration, so I personally do not have a problem with that.

Q64 Baroness Howarth of Breckland: Can you give an example? 
Mrs Justice Bracewell: Something that does not involve the upbringing of a child, whether somebody should be joined as a party to a particular set of proceedings. Welfare is not the paramount consideration. 
Dame Elizabeth Butler-Sloss: It is very important to bear in mind that if we are making an enforcement order, that means that there has been a breach of a court order. We really cannot allow breaches of court orders just to be disregarded. It is actually between the contemnor and the judge as well as the question of the welfare of the child. We would not make an order to deal with contempt that was to the detriment of the child, but having said that, there are two issues here. One is the welfare of the child and the other is how you deal with somebody who has deliberately flouted a court order.
Q65 Baroness Howarth of Breckland: So you see no conflict.
Dame Elizabeth Butler-Sloss: No, like the Bar—we see no conflict. Interestingly of course, Silks sit as Deputy High Court Judges, so they would have this experience as well.

Q66 Ann Coffey: When relationships break down it is a long way before they go to court or see a solicitor, and often, in the aftermath of that immediate break-up, attitudes are taken. Children witness that break-up and attitudes are set. Do you feel more should be done, if we are really talking about early interventions rather than relying on getting a change of culture when we get into the court of providing resources for parents in the week after or days after a break-up, to be able to speak to somebody? How do you think that could work?
Dame Elizabeth Butler-Sloss: Yes, in principle, but how do you get to them?
Mrs Justice Bracewell: It is not a matter for the courts; they are not before the courts.

Q67 Baroness Howarth of Breckland: That is the point I am making.
Dame Elizabeth Butler-Sloss: If the agencies know about it, or any of them—and Relate is an obvious example referred to earlier—that is great, and there are various organisations like One Plus One, and I very recently went to speak at another wonderful organisation/charity “Time in Families” trying to save relationships. I think we ought perhaps to be selling, whether it is in the public library or in the Job Seekers or in social security, the idea that there is information available out there, and there are people to whom you could turn if the marriage or the partnership has broken down—but this requires resources. I do think we should be offering to the public something to prevent them ever coming to court. I am totally in agreement, but how do you do it?

Q68 Virginia Bottomley: We are all talking about children whose worlds are coming to an end through bitterness and unhappiness, and there are two needy and bitter parents; but there is no mention in the Bill of grandparents. Is there any way in which our learned legal witnesses can think that grandparents could have any mention, because the truth is that when both parents are falling apart—
Dame Elizabeth Butler-Sloss: Well, we are both grandmothers!

Q69 Virginia Bottomley: I did also want to say that this is part of seeing the world through a different telescope as one gets older.
Dame Elizabeth Butler-Sloss: I have to say that some grandmothers are incredibly helpful, and others are incredibly destructive.
Mrs Justice Bracewell: And others are part of the problem, not part of the solution.
Dame Elizabeth Butler-Sloss: Some of them, in certain communities, create the problem.

Q70 Chairman: Is part of the problem that in a child’s life, particularly when their parents are having a difficult break-up, there can be other significant people around that relationship that are very important to the child? I suppose that in a way what underlies this issue about grandmothers is whether you feel the court has sufficient powers and influence to bring on board other significant people in that child’s life when dealing with it. It is not just grandmothers.
Dame Elizabeth Butler-Sloss: Section 10 of the Children Act gives the power to the court, of its own motion and not only on application, to make somebody else in the family or not even a person in the family a party. They have got to have permission. If we find the grandmother is the right person to come in—maybe the grandmother should take over the care of the child for a while.

Q71 Chairman: You have sufficient powers in that, be it a grandmother or grandfather or—
Mrs Justice Bracewell: As a matter of routine, the CAFCASS officer will draw your attention to the position of members of the family, and the part that they play or do not in the life of the child.

Q72 Chairman: Before moving on to the enforcement issue, everyone is agreed, as you indicated in your early comments, that we all know where we want to get to on this. We want less of the adversarial system and more on the mediation, conflict resolution and problem-solving approach. How confident are you that the Bill will achieve this?
Dame Elizabeth Butler-Sloss: It is not intended, as far as I can see, to be at the beginning stage, but I do think at the middle stage. If my framework works, every single family who are in dispute will be obliged to go through an in-court conciliation session with the district judge and the CAFCASS officer—that is what CAFCASS has signed up to—wherever they are able to provide the CAFCASS officer—and they are doing it on a rolling-out
process across the country. Everybody will have been through that, but those who do not agree then come in to the second part of it, which is having their case heard. Some of those parents will accept an order. They cannot make it themselves, but if a judge or district judge or magistrates say, “this is what you will do”, they will go away and do it. For the ones that will not, that is the point at which we can put them under this Bill into the information sessions, to the therapy and possibly the very difficult parents to an anger management course—if it is available, for goodness sake—and whatever else may be available locally. That is the point where this Bill could help in conciliating, by focusing on where the problem is with one or sometimes both members of the family, because a lot of these people have psychological problems, maybe created by the breakdown, or perhaps it is why there was the breakdown of the relationship. We are not talking about easy people. The ordinary decent, 85–90 per cent of parents, settle it themselves. We deal with 10 per cent at most.

Chairman: We acknowledge that we are dealing with people who are finding it incredibly difficult to resolve the problem in a way that is not damaging to the child. We will turn to enforcement now.

Q73 Jonathan Shaw: Picking up your point about resources, Dame Elizabeth, I understand that the inspection regime for the standards of CAFCASS is the Magistrates’ Court Inspection Service.

Dame Elizabeth Butler-Sloss: Yes.

Q74 Jonathan Shaw: Do you think that this service should come under the auspices of the Social Care Commission, particularly when you consider the Government’s drive for integrated children’s services for the new Children Act and Every Child Matters?

Dame Elizabeth Butler-Sloss: I have absolutely no idea. It is not a question you have asked in adizna. It is not something that is within my knowledge.

Mrs Justice Bracewell: I have no knowledge.

Q75 Jonathan Shaw: Perhaps that is something for the Committee to consider.

Dame Elizabeth Butler-Sloss: I do not know whether Arran Poyser, or his boss, are being called on this. They certainly spoke to the other select committee.

Q76 Jonathan Shaw: The point I am making is that your very valid point about whether services and resources are going to be available for the menu of options that the courts may have available to them if someone is not complying, is very important, because we could find ourselves heading towards the more punitive end earlier than we might have hoped.

Dame Elizabeth Butler-Sloss: I do not agree with that. I do not believe that we would be muddling up—that is what you are talking about—the punitive end, and the information and effort-to-conciliate end. I really do not see that, not as a judge.

Q77 Jonathan Shaw: Do you not agree that if the therapeutic services and counselling services are weak and inefficient in an area, then you may well find that that work cannot happen, and so then you are more likely to end up at the more punitive end?

Dame Elizabeth Butler-Sloss: I suppose it is possible, but I certainly would hesitate very strongly to go to the enforcement end until I was pushed into it. I do believe that this is a point at which I probably would go to the CAFCASS officer, for whom I have enormous respect, and say, “what can you do on that?”

Q78 Chairman: I do think it is an important question, but it is one probably for the Minister, in terms of the resources available, although the answer you have given us is useful because you are almost indicating to Mr Shaw that you could deliver this outcome now. Is that right? The outcome that you are seeking is to make use of the services.

Dame Elizabeth Butler-Sloss: At the moment, certainly in the cases I try, if I have confidence in the CAFCASS officer, which I do, I would do it under a review. I would say, “In six months’ time we will have a review and would the CAFCASS officer stay in and see what can be done?”.

Mrs Justice Bracewell: Could I add that I do think we need another option on the menu, and that is to reform the Family Assistance Order under section 16 of the Children Act. It has not worked and never has worked, because it has never been funded. Every party has to consent, and it is limited to six months; and it is allocated to the local authorities, which have no real interest and give it very low priority, and quite often refuse to do any work. If it was the CAFCASS officer who was given a family assistance order, irrespective of whether the parties consented, with the flexibility of time suited to the particular case, I think that that could be very valuable indeed.

Q79 Mr Chidgey: On the question of the other measures that you can take, which we have discussed at some length, have you been consulted, Dame Elizabeth, or have you expressed views on the confidence you have that the resources will be available to administer the orders that you put in place as a judge? I am thinking particularly now where you decide that basically a community service order is appropriate. Normally, that would be
administered by the probation service or the probation officers.

Dame Elizabeth Butler-Sloss: Yes, that is what we understand.

Q80 Mr Chidgey: Rather than a CAFCASS officer, although they may be trained as both, of course, given the history of the development of the service. Of course, the whole thing falls apart. We have already heard of the delays in the process anyway because of lack of resources, and this is just not going to happen if resources are not there.

Dame Elizabeth Butler-Sloss: Can I take the example of Australia, because through my legal secretary I have been getting some information about how it is working there. Quite simply, where they have resources, which they have in Sydney, it works; and in other places, where they do not have resources, it does not work. That is the absolute bottom line. I would not want to put anybody on to community service if I could avoid it. I do think the threat would be extremely useful, because I would be prepared to do it. But there is no point in having a community service order in six months’ time; so if the person cannot be put onto that particular graffiti cleaning down the underpass, then we cannot really make an order. I understand that these orders would really be the responsibility of CAFCASS to work out with the local probation service, but we have got to have the place to do it.

Q81 Jonathan Shaw: Taking Mrs Justice Bracewell’s point about sorting out the front end rather than the back end, at the front end you might be using these threats—

Dame Elizabeth Butler-Sloss: “You will go to an information session”—

Q82 Jonathan Shaw: Yes, “otherwise you are going to be clearing up the dog poo on the common”.

Dame Elizabeth Butler-Sloss: Yes. I would like that in at a very early stage. “You do realise I have the power to send you to clean the graffiti on every Saturday afternoon for three months, when I know you want to go and do something which you would enjoy doing, like shopping.” I think it is a very valuable threat. I am quite keen on the curfew, but not only for the reasons given by the Bar. I think the curfew would be very useful to make sure that mother is there and has not taken the child off to the football match; but if she really refuses, why should she not have to spend the whole of Saturday afternoon at home instead of going shopping?

Q83 Jonathan Shaw: You see it as a punishment.

Dame Elizabeth Butler-Sloss: I see it as a punishment.

Q84 Jonathan Shaw: Not just to facilitate contact.

Dame Elizabeth Butler-Sloss: I think it should be both. You should be capable of using it for both—and why not? But I would not want to use it for seven days; I would use it for two hours or four hours. What we are able to do under this Bill is make it more onerous, so I would say, “you cannot leave between two and four, and if you do not behave I will make it between ten and six”.

Q85 Jonathan Shaw: In the draft Bill, Dame Elizabeth, it says that an enforcement order is proposed if necessary to secure the person’s compliance with the contact order.

Dame Elizabeth Butler-Sloss: Yes.

Q86 Jonathan Shaw: So you think that by imposing a punishment like a curfew, you may well achieve that.

Dame Elizabeth Butler-Sloss: Well, prison will not I would not want to put anybody on to community a vect contact directly, but it does a vect compliance, service if I could avoid it. I do think the threat or it may do, except that there are the mothers who pack their bags every day they go to court. They are waiting to be sent inside, and there is no point putting someone inside who has already packed their bag!

Q87 Earl of Dundee: Dame Elizabeth, you talked about Australia. I gather that the Canadians too are evolving good practice. How can we then benefit from the examples of Australia and Canada?

Dame Elizabeth Butler-Sloss: I do not know about the Canadians. That is a fault on my part, because I know Australia better than I know Canada. The Australians have not really quite got their act together, as I understand it, but where they have the resources and they put people to it, it is working well. This is not at the enforcement end so much as at the information session, therapy, anger management courses and so on. I think that is right.

Mrs Justice Bracewell: Yes.

Q88 Earl of Dundee: Your point is that we need more money to do the same, and it is almost as simple as that.

Dame Elizabeth Butler-Sloss: Absolutely; it is resources. May I just make the point that I would be very much opposed to tagging.

Q89 Chairman: I was going to ask you about that. You would be strongly opposed to that, would you?

Mrs Justice Bracewell: I cannot see any place for tagging in these disputes.

Q90 Chairman: Do you think that most of your colleagues would agree with that?

Dame Elizabeth Butler-Sloss: I think we totally agree with it. That is one step too far.
Chairman: The reason for that is literally that it is just too much of a punishment or because you cannot see a use for it.

Dame Elizabeth Butler-Sloss: I cannot see it as appropriate for parents. I can see that, rather than putting a parent into prison, to ask her to clean the underpass is a perfectly reasonable, sensible alternative. Tagging seems to me—

Ann Coffey: If the difficulty in the past has been that because it is so difficult to send a parent to prison that there is not really a proper menu of enforcement, is not the argument that tagging curtails somebody's liberty and is inconvenient and would therefore offer something other than prison which was also uncomfortable and inconvenient, and the person involved thought was humiliating or difficult for them?

Dame Elizabeth Butler-Sloss: Yes, put that way I agree with you. However, I do think that we can achieve it in a slightly less unattractive way by saying, “you will be obliged to stay in” or “you will be obliged at the last resort to go and do something that you would find unpleasant”, rather than putting somebody into prison which deprives the child of, say, the mother overnight. It is less detrimental to the child to have the mother on a weekday, when the child is at school, going off to do community service; and also the child will not be seeing the mother doing all that, whereas the child would see the mother tagged. I think it is difficult.

Mr Chidgey: Dame Elizabeth, is it not the case that if one is going to impose a curfew requirement, recognising the limitation on human resources, it is inevitable that you will need an electronic device to ensure that that curfew is maintained—unless we have a policeman standing outside the garden gate?

Dame Elizabeth Butler-Sloss: Not necessarily, because the other parent will arrive at the house, and despite the order for the curfew, the child will not be there—mother will have taken the child out for the afternoon.

Mr Chidgey: That is not the case when it is being used for contact, rather than as a punishment; but you have made the point that it could be both.

Dame Elizabeth Butler-Sloss: Yes. I would like to use curfew as a realistic way of ensuring that the child goes to the father or to the mother, but I would like it to be seen by the parent as punishment.

Mr Chidgey: Which would mean you would need to tag, if it is going to be that.

Dame Elizabeth Butler-Sloss: If the child is not there for the father to collect, then you put the mother inside as the next stage, I suspect. You do send the mother into prison.

Chairman: Then you get into a difficult area of whether you have a criminal punishment, in effect.

Dame Elizabeth Butler-Sloss: Yes. I am not quite sure what the ultimate punishment for a refusal to comply with enforcement is. I assume it comes back to imprisonment.

Chairman: It must do, must it not, in a sense? It is like any other non-compliance with any court order, as I understand it as a non-lawyer. That must always be the end game.

Dame Elizabeth Butler-Sloss: Might I raise one matter that the judiciary are worried about, and that is the compensation for loss of money. We are very much in favour of compensation. There is one case quite recently—I was not in it—where a father was going to take the child on a ski-ing holiday and mother made it impossible for the child to go. All that money is wasted, and it was quite unreasonable.

Mr Chidgey: So you are in favour of that.

Dame Elizabeth Butler-Sloss: Yes, but it is going to be dealt with as a civil debt.

Mr Chidgey: And you think that is not realistic.

Dame Elizabeth Butler-Sloss: Not realistic.

Mr Chidgey: So what would you suggest; that there is some enforcement there?

Dame Elizabeth Butler-Sloss: I think we ought to be able to treat that as contempt, and say, “you pay, otherwise you go inside”; but to treat it as a civil debt means they have got to go to the county court and they have got to enforce it. The procedures in the country court are slow on enforcement, and I think it will be lost in the mist.

Mrs Justice Bracewell: We will be blamed, will we not?

Dame Elizabeth Butler-Sloss: They will laugh at us for making a compensation order that cannot be enforced.

Chairman: I just want to deal with the small part of the Bill that deals with the specific area of adoption.

Baroness Hooper: You probably heard my earlier question, and Philip Moor’s response. Given that it is considered that these provisions are non-controversial, do you agree with that? Is there anything in the adoption procedure?

Dame Elizabeth Butler-Sloss: I have looked at this with considerable care, and I cannot see anything that we could possibly object to.

Mr Chidgey: I am sure you will be aware that a few months ago there was a stop ordered by the Minister on adopting children from Thailand because of the concern of orphans being bought.
Dame Elizabeth Butler-Sloss: I am aware of it.

Q103 Mr Chidgey: It was quite understandable, but the situation arose, and would arise again if this process continues, of some adoptions going through the actual process, with the adoptive parents being in the country visiting the child and arranging all the necessary paperwork to bring the child back to England. What happened in that case is that the guillotine came down and a number of families were literally in the country in the middle of the process, and were left high and dry. That has caused considerable concern to the people involved. Do you feel that that process could be handled better? We have to look after the interests of the adoptive child, obviously, but we also have to look after the way the process is introduced. Should those cases not have been allowed to go through the process and completed, and not just stopped?

Dame Elizabeth Butler-Sloss: We are dealing with an agonising situation, are we not? Here we have people who are unable to have children who are adopting outside the United Kingdom because there are not enough children here. But if the process in the other country is profoundly unsatisfactory and it is thought that it has to be stopped, to let the ones through is in a sense going to be bucking the system because what was wrong may presumably be wrong with those particular cases too. If you are going to have a guillotine, I suspect it has to come down.

Q104 Mr Chidgey: I was going to suggest, Dame Elizabeth, that we could have reviewed those individual cases one by one, to ensure they did comply, rather than assume that every one was—

Dame Elizabeth Butler-Sloss: If there can be a process! This was a Government decision, was it not?

Q105 Mr Chidgey: Yes.

Dame Elizabeth Butler-Sloss: It was not a judicial decision. If the children had come to this country, they could be looked after because we can perfectly well make them wards of court; we could put them with the family under certain conditions and so on, but if they have not left the country then one of the other problems is our immigration law, as to whether or not the immigration authorities will let them in.

Q106 Baroness Nicholson of Winterbourne: Do the courts feel that the burden of proof provided by the justice systems in the countries providing the children for inter-country adoption matches that you would require here, and if it does not whether you feel there is any judicial process that could be brought into play by the British Government maybe in the countries of origin of the children, which would ameliorate that gap?

Dame Elizabeth Butler-Sloss: We have to make the adoption order in this country. I do quite a lot of these foreign adoptions, as I suspect you do too.

Mrs Justice Bracewell: Yes, I do.

Dame Elizabeth Butler-Sloss: We do look at them with considerable care. The child does have a guardian, and we look to see whether anything is unacceptable. I would have thought once the child is in this country we can deal with whether or not the system in this country is all right, and whether the child is properly being presented to the court. What you do in the country of origin I do not know. There are some fairly dicey things going on in other countries. If the child is here, and it is a perfectly respectable family going to adopt the child, the child will be all right. How you deal with it in the other country—I really do not see what we can do.

Q107 Baroness Nicholson of Winterbourne: Is there an ideological gap between the philosophy adopted throughout this debate on contact, for example, between a child and its natural parents, and in a country adoption child and contact with its natural parents?

Dame Elizabeth Butler-Sloss: Apart from a famous Bosnian case that hit the headlines, where the child should never have been adopted and eventually the adoption was set aside, I have never come across a case from eastern Europe or the Far East where there has been any suggestion of a continuing contact with the natural parents.

Mrs Justice Bracewell: Nobody has ever asked for it.

Dame Elizabeth Butler-Sloss: Nobody has ever asked for it. The parent has handed the child over for process! This was a Government decision, was it not?

Q108 Virginia Bottomley: I am very grateful. Is it not regrettable—a leading question—that none of our major children’s charities, which have done so much to develop best practice on domestic adoption, will go near inter-country adoption? This may be because they had such bad experiences of what happened with the children going to Canada and Australia before the war that they shy away; but if only any of those highly regarded—Save the Children—charities became involved, they could help develop best practice. I do not know whether Dame Elizabeth can also comment on the
dilemma—and I speak from experience here—that when greater legal requirements are imposed on the sending country, the danger is that those countries do not want to acknowledge that they are exporting their children, and the children get left relinquished in pretty unsatisfactory children’s homes, rather than the governments face up to the reality. For the child concerned, turning a blind eye sometimes meant that the child went to a happier home sooner. Dame Elizabeth Butler-Sloss: This is why, if the child is in this country, as long as the family is suitable and the conditions of our adoption legislation are covered, I would not want to be too rigid on that. The first point is a lobbying point, if I may say so. Mrs Justice Bracewell: It is not a judicial point. Dame Elizabeth Butler-Sloss: Not a judicial point. I have nothing but sympathy, and since I am about to retire I thought that was a very interesting point with which I have great sympathy.

Q109 Baroness Howarth of Breckland: It has become very clear from all our witnesses that there is a will for prevention rather than enforcement, and that the family assistance orders came central to that. I wondered whether our witnesses would be prepared to put in writing some of their thinking about how the family assistance orders could be improved, because that would assist the Committee hugely. Dame Elizabeth Butler-Sloss: I do not think there will be anything private about the fact that I have been—and I expect that Joyanne has also been saying very firmly to the Government departments that we must bring family assistance orders into this Bill. We have been saying this absolutely openly. We would be delighted, between us, to provide you with a short note with our views on it. It will be exactly what the two Government departments have heard!

Q110 Chairman: Could you do a short paper on that? I also wonder about the contempt issue because you have made some interesting comments about how you deal with contempt in terms of breach. It may be that we have sufficient understanding but I was not quite sure how far you wanted to push the contempt issue with a parent who was not co-operating on the arrangements. Dame Elizabeth Butler-Sloss: We certainly would not want to lose the opportunity to send a parent who is seriously in contempt to prison. Interestingly, there is another country’s view that if you put them inside for a short time, it has a magnificent effect. We have perhaps been a little pusillanimous in this country over the last 30 years in not wanting to put parents into prison, because the prisons are busy enough anyway, without our recalcitrant parents! Perhaps we should be tougher. I would rather go down the route of this Bill, which may I say I really do commend. I think it needs some improvements, but it certainly is a good Bill and we do need some further powers with which to encourage parents to behave themselves. Chairman: Thank you. We have been longer than intended, but it has been very useful. I would certainly want you to write in if you feel there is anything not in the draft Bill that you think ought to go in, or if there are any other matters that have not been adequately covered this morning. Please come back to us, but particularly on the family assistance issue. Thank you very much indeed.
THURSDAY 24 FEBRUARY 2005

Present: Mr Clive Soley (Chairman) Gould of Potternewton, B
Vera Baird Howarth of Breckland, B
Virginia Bottomley Nicholson of Winterbourne, B
Mr David Chidgey
Ann Coffey
Jonathan Shaw

Morgan of Drefelin, B

Memorandum by CAFCASS

Part 1: Contact With Children

1 11A Contact Activity Direction

1.1 CAFCASS fully supports the proposals for “contact activity” aimed at facilitating contact. We believe there are a range of situations and circumstances where parents would benefit from this type of intervention and support aimed at assisting them to focus on their continued parental responsibilities towards their child. We think this will also support practitioners using the new parenting plans or other dispute resolution approaches throughout the period of involvement with a family network.

1.2 One of CAFCASS’ predecessor organisations, the Court Welfare Service, had a long history of initiating innovative work with parents such as Living with Divorce and Surviving Separation courses which were sadly the victim of resource cuts in those services. CAFCASS is already involved in promoting similar work through participation in the Family Resolutions pilots as well as the many court directed dispute resolutions schemes. Early evaluations of some of these schemes are showing promising success rates. The work is not easy. By the time they reach court many couples have adopted entrenched positions—a stark contrast to the way the may have shared their parenting up to the break up of the family—and the focus can be on one parent granting or not granting parenting time to the other. Our view is that resources need to be focused on restoring communication between parents working intensively and creatively, especially with the most rigidly divided parents.

1.3 Information sessions and programmes designed to focus on parental responsibilities in meeting their child’s needs and to assist in establishing, maintaining and improving contact provide the opportunity for parents to focus on what is in the child’s best interest and reach a better understanding of the impact that continued parental conflict can have on the child, including the risk of continuing emotional harm. It is important that in all this the child remains the primary focus, even when equal parenting time agreements can be facilitated.

1.4 We envisage that CAFCASS will work with the voluntary and statutory sector throughout England to identify a range of services and provisions from which to tailor individual programmes. We already have links with perpetrator and domestic violence programme providers as well as supervised and supported contact centres. We contract with the voluntary sector to provide child counselling services in some parts of the country and are confident that we would be able to come up with the right programmes. We think these programmes should be commissioned through the new children’s commissioning arrangements being brought together in Children’s Trust frameworks. In our view, family justice is a core local children’s service. An increasing number of children we support fall within the commonly accepted definition of children in need.

2 Facilitating and Monitoring Contact

2.1 CAFCASS believes that we have a central role in facilitating and supporting contact where it in the best interests of the child and where an order has been made by the court. We firmly believe that, where it has been decided that contact is in the child’s best interests, society has a duty to the child to ensure that the child indeed has the contact that has been agreed. We believe that our role in assisting parents
and the court to establish viable contact arrangements must extend to ensuring that such contact takes place. We also believe that there is more that can be done to facilitate and support contact arrangements.

2.2 To take forward this work efficiently and effectively CAFCASS may need to look to diversification of our workforce to provide Family Support Workers who can invest time in building the confidence and trust of families to support children and families in safe contact arrangements. We see this as an exciting opportunity to ensure staff skills are developed and targeted appropriately and to provide more tangible support to families.

2.3 The development of our family support services, working together with other providers, could run alongside the information sessions and programmes mentioned above in a new continuum of support.

2.4 These measures sit alongside the continued thrust towards problem solving and dispute resolution to which we are already fully committed and taken together mean that we would be in a position to provide support to families so that there are effective arrangements between children and non-resident parents in accordance with the child’s needs.

2.5.1 While the majority of private law cases with which we work do not meet thresholds, which give them access to support from social services, we know that many of the families share problems of debt, poverty, health, drug and alcohol misuse and mental health problems. The proposals within this Bill would go some way to facilitating referrals to specialist agencies where a particular programme is most likely to support a vulnerable child or family through the underlying process of change in attitude or behaviour which will “make contact work”.

2.6 The capacity to follow up contact orders for a limited period identified by the court will allow us to ensure that where contact does not take place this can be followed up. This will include bringing the matter back to court but may also include taking steps to put in place more robust arrangements to ensure that contact takes place as planned. In some cases this could be using Family Support workers or volunteers to be present at handover or take children to contact if this cannot be achieved through other means such as family members or friends.

3 Enforcement Orders

3.1 CAFCASS believes it is best to take positive steps to get contact working and to ensure that the arrangements agreed by and in the court do actually happen. We will continue to work with families and the courts to ensure this. We do however believe that there are a very small number of parents who will resist all efforts to ensure that their children do not see the other parent. We acknowledge that in some cases this is because of a deeply held belief that the parent poses a risk to the child or them even after all objective assessment has found this not to be the case. In other cases it is for less sympathetic reasons. In some cases it is because of unwavering and unjustified hostility. Yet it is precisely because the risks of family violence are so real that professional judgement always needs to be carefully exercised, backed up by careful and comprehensive risk assessments.

3.2 CAFCASS welcomes the recognition that arrangements for contact are of critical importance in the life of a child and that it is appropriate for court orders to be enforced. The CAFCASS practitioner who is working to achieve compliance with the order may be, in some cases, the most suitable person to bring the matter back to court, especially where the other parent is not legally aided. Where family support work needs to continue we have reservations as to whether the work of the practitioner offering such support would be adversely effected if they were directly involved in what may be a protracted process of taking enforcement action and assessing the parent for suitability for community service or curfew orders. We therefore anticipate that to fulfil this duty, the role might best be delivered through the appointment of a different enforcement and support worker, thus allowing the practitioner to continue to work with the family to facilitate and support contact.

3.3 Enforcement Orders: further provisions

We envisage that in the small number of cases with a need for sustained enforcement action, we would still work to ensure that the original order is honoured, as in our view, dispute resolution remains the intervention of choice throughout the life of a case, whatever the stage. We welcome the focus in this section of the Bill that the action is both proportionate and necessary to ensure compliance with the contact order. We also welcome the focus on ensuring that the action is safe for children and proportionate to the breach.
PART 2—ADOPTIONS WITH A FOREIGN ELEMENT

4 CONTROLS AND REGULATIONS

4.1 We welcome the proposals to strengthen controls in respect of such adoptions and the potential this has to reduce inappropriate and harmful practices. Such legislation can only serve to add to the pressure to improve practice in countries where there are concerns about child trafficking or removal without consent.

4.2 The making of regulations to deal with exceptional cases and the consideration of the issues which might be deemed exceptional are sound and have the potential to create a balance between the need for robust public policy and the needs of individual children in specific cases.

March 2005

Examination of Witnesses

Witnesses: BARONESS PITKEATHLEY OBE, a Member of the House of Lords, Chair, MR ANTHONY DOUGLAS, Chief Executive and MS SUSAN ARNOLD, Practitioner, Children and Family Court Advisory and Support Service, examined.

Chairman: Can I welcome the witnesses from CAFCASS to this meeting. First of all, can I ask for any declarations of interest from the Committee.

Baroness Howarth of Breckland: I have a declaration as the Deputy Chair of CAFCASS and, therefore, will not be able to question the witnesses. I know them rather well.

Q111 Chairman: That is fine. I think you ought not to take part in the questioning. You ought to know these proceedings are being relayed into another room for members of the public and the full transcript will be published on the website for this Committee early next week as well. That includes, also, the details of Members of this Committee and their interests. Thank you very much for coming. First of all, can you tell us what your general response is to this Bill and, also, perhaps a brief description of what you do now in relation to this? We will then move on to how we think your work might change as a result of this Bill.

Baroness Pitkeathley: Shall I start off with that. CAFCASS very much welcomes the opportunities in this Bill for focusing more on the interests of children in this very difficult situation of family break-up and subsequent difficulties around contact. It fits in very much with the reforms and reviews that we have been doing of CAFCASS since the new board was appointed almost a year ago and since our new chief executive was appointed about six months ago. Those changes focus very much on delivery, reducing delays, working in partnership and encouraging innovation. We see this as an opportunity to encourage innovation and work with families in different ways with the emphasis always on the welfare of the child and the interests of the child.

Q112 Chairman: At the moment a lot of people would say you do far too much work on report and not enough work on mediation, is that a fair statement?

Baroness Pitkeathley: I think that is and I am sure Anthony will have something more to say about that.

Q113 Chairman: Do you want to add to that? Mr Douglas: Our reports are good and comprehensive, some of them could be shorter and more focused but the bulk of our practitioners now, working with best practice judges, do produce very short focused reports on specific issues and that is the model we are looking to extend around the country. Many cases are complex and they do need, at court’s instructions, very long and detailed reports to do the situation children are in justice.

Q114 Chairman: Would you say that the reports at the moment describe an existing situation or do they focus, also, on how things could be moved forward in order to resolve the problems?

Mr Douglas: They pretty much always focus on relationship breakthrough to try and find solutions to what have become by the time a report is commissioned pretty intractable problems. We have very few reports on unnecessary cases, they are nearly all on cases which have been through mediation already, already been through dispute resolution and where after some initial work the problems are deeper or more intractable. The report is only part of the process and often it tries to put down on paper for the parties and for the court the issues there are between them. Again, as the report is being written, if a situation is being resolved, the report is abandoned often and our practitioners go back to court with a consent order. Really they only have a place now in very deeply difficult intractable cases and they are nearly always focused on what is the way to try to break through something that is very deep and intractable.

Q115 Chairman: Perhaps to you, Lady Pitkeathley, you will be well aware from the Constitutional Affairs Committee report the other year—I was a
member of that Committee—the importance of dealing with delay in appointing an officer. I am looking to the past now. Is that going to be behind us? Are we assuming that there will be rapid appointment?

**Baroness Pitkeathley:** We are dealing with delays very adequately. We are improving our efficiency, we are looking at different ways other than reports to speed up the system. I would have to say to you that it is still patchy and some areas of the country are much better than others. Our focus is very much on delivery and reducing those delays because we are extremely aware of the concerns that previous Committee had and the repercussions of that.

**Chairman:** I think we are all very concerned about that.

**Q116 Ann Coffey:** In what way do you think that CAFCASS might have to adapt its practices to deal with its changing role proposed in this draft Bill?

**Baroness Pitkeathley:** I think CAFCASS has got already very good examples of how we are adapting our practice and, indeed, that is the purpose of having my colleague, Sue Arnold, with us so that she can give you some examples of dispute resolution from her area of Staffordshire. I am sure she will want to do that. I would have to say, also, that it is important for other people in this process to adapt their practices as well. We are very dependent on the judiciary itself adapting its practices in order that we can respond to that. One of the specific ways, for example, is to work very much more proactively in partnership with other agencies than has been the case hitherto.

**Q117 Ann Coffey:** Can I ask you something particularly on that point. Very clearly the Government policy is very focused on children and rolling out children’s centres, delivering services to parents through those children’s centres in each community. We were talking this morning about making early interventions before parental attitudes were hardened by the time they got into the court system. Do you feel that in the future perhaps CAFCASS should be more involved in those developing children’s services and particularly in the children’s trust locally?

**Baroness Pitkeathley:** I think that is very much our place at the heart of the children’s services. I think if a criticism can be levelled at CAFCASS in the past it has been that it has stood alone rather more than is the ideal situation. I think involvement in those partnerships, active working together with all kinds of agencies, whether it is social services, the voluntary sector, the local legal partnerships which are developing, is something which we must emphasise. It is very important that we take those cases at the earliest possible stage, which is what Sue’s project is about: early intervention and the effect it has on families.

**Q118 Ann Coffey:** Do you feel that there is something which needs to be added to the Bill to make that more likely to happen?

**Baroness Pitkeathley:** I think the key to it is going to be in the practice and how it works out. One of the things I think can be done is the exchange of information and the sharing of best practice because, again, I think CAFCASS has perhaps in the past not done that as adequately as it might have done.

**Mr Douglas:** If I could add. I think the consequence of the structural isolation relatively is that the work that is needed intensively with families with many of these children who are children in need does need the sort of family centre services with a strong infrastructure where staff are supported, trained and supervised to deal with these very, very difficult and complex cases with parallel public law cases much of the time. At the moment in private law it is more or less a separate system with threadbare funding for contact centres, relatively unsupervised staff, and really it is not the setting to put children and parents in the levels of dispute they are to get a breakthrough with them. That is why I think for these particular cases we need our service to be rooted in mainstream children services and to make far greater use of the children centre model which we have seen in programmes like Sure Start working intensively with families, particularly younger families with young children where it is immensely successful. I would like to bring Sue in because of the work she has been doing, particularly on early intervention and dispute resolution in Staffordshire which can bring some of that to life.

**Ms Arnold:** It is really quite interesting that I came to CAFCASS and realised that we were having a great deal of reports and we needed to move the focus from the reports to preventative stuff. We developed an alternative dispute resolution scheme which could not function if we did not have wonderful relationships with the judiciary in our area and partnerships with different agencies and voluntary sector and private agencies. Briefly, what happens is that people who are in dispute, parents in dispute, will go to court for a first directions hearing. We have CAFCASS officers there helping them to resolve any issues which could be resolved at that short stage but most often people need some space and they need to come to us. After doing our screening process and ensuring that it is safe we bring those people together. We have up to three sessions in a locality office. We include children where it is appropriate and we have found that we
have had some wonderful results from this project. We have reduced our report writing and it is only 14 per cent of those which have come to us through this dispute resolution which have ended up with reports. I can say that those reports are very complex and difficult and it is quite often that those people are extremely hostile to each other. We do have to spend a lot of time working on those, which is when I welcome the idea of the Bill because some of those factors in there would be helpful. I have a number of cases that I could say where that would be helpful in the more difficult cases. I do not know whether anybody would like to ask me some more about that?

Chairman: That is very helpful. What I would like to do is as we go through our questions, and if you have something from your experience or knowledge to contribute, please indicate and I will make sure you are brought in.

Q119 Baroness Morgan of Drefelin: I want to go back a tiny bit to ask Lady Pitkeathley if she wants to expand or clarify a little bit on the question of what adaptation you would see the judiciary needing to make. I was not quite clear what that meant.

Baroness Pitkeathley: I think it is on the question of the expectations of the judiciary. Like all professions, some people in the judiciary find it very difficult to change their expectations. Some of them who have been used to receiving very long and complex reports and have seen that as CAFCASS’s role will continue to do so. In order to have the resources—and I am sure the Committee will want to ask a question about resources—to free up the CAFCASS officers to do this other kind of work, such as my colleague has been mentioning, we need the judiciary not to have those expectations. I would have to say that is happening already in many areas of the country. I could give you lots of examples where that is happening but unless it happens everywhere then obviously we are going to have go on fulfilling those expectations with the consequence of using the resources in a different way.

Q120 Chairman: A question maybe for Ms Arnold here. Given that you are reducing the report writing in your case, are you expected to go to court and speak about the situation rather than do a written report at the time and maybe describe a process by which the couple might be able to resolve their problems?

Ms Arnold: We have a brilliant relationship with our judiciary. I do say because of that, this is why this works. We have a brilliant communication process. When people have been to the dispute resolution scheme, at every session it is reported back, a very short note, a form which gives details of what the content of that session included, what possible agreements have been made, what needs to be done. The court file is up-to-date all the time. We can offer an appointment within the first week after directions, which is very good. We have a 12 week waiting for report so it gives a service very, very quickly and it has been very effective.

Q121 Vera Baird: Very much on the same theme, trying to probe perhaps slightly more deeply about the change of roles and how CAFCASS sees that it has to adapt. Now the bulk of your expertise is in drawing out the nature of a disagreement, trying to get to the bottom of it in order to point a route forward and to supply that to the judge so you are detached, descriptive, analytical and now your officers are going to have to change to become engaged, advisory, mediatory, supportive, they are almost at opposite poles of the kind of activity one could imagine social workers broadly engaging in in the context of breakdown. You are going to have to have a major change in ethos, are you not, to cope with that?

Mr Douglas: I think that more typically characterises our public law work where children’s guardians represent children and do work forensically on local authority plans, and on the planning side, and do some direct work. Certainly our work in private law for some years now has been face-to-face, very direct, working with high levels of anger and distress in families. That is what our practitioners have been doing day in, day out for some years in private law. I think they are massively experienced in that and, as Lady Pitkeathley and Sue Arnold have said, when there is a terrific relationship between a particular district judge and our local team their success rates at breaking down hostility and disputes, the figures are very, very good. In North East Lancashire, Leeds and Somerset, we are looking at—as Sue Arnold said—levels of reports only being a small fraction of the overall numbers of people seen. I think the challenge is that often we reach the limits not of our abilities or endurance but of the overall resources needed to work with particularly difficult, complex families. I think we need to look at much more of a public law model where it is not just our practitioners but there might well be a mental health resource, a support resource for a mother, a child and sometimes for a father and the levels of resourcing across a system rather than simply have practitioners who on the whole, in 99 cases out of a 100, work on their own often facing some pretty high levels of attrition, bombardment and sheer reluctance by some parents to move forward or some of the elements we see in public law health cases, mental health difficulties, high levels of
domestic violence, or levels of anger that people describe as “Well, I used to be a placid person but I do not like the person I have changed into”. When relationships break up people become strangers to themselves and until they move on or are helped to move on they are often impossible to deal with. Baroness Pitkeathley: Of course, the board and management of CAFCASS takes very seriously our duty to our workforce in terms of providing them with adequate training, proper support, proper management in order to help them deal with these very, very stressful situations.

Mr Shaw: Just to pick up on a point that Anthony Douglas made. You were referring to the complex cases and you were saying perhaps CAFCASS officers were unique in the children and families wider field where they worked in isolation. Has there been any research undertaken where you are able to identify these very complex families who are the clients, also, of other agencies? I am particularly thinking about therapies, whether they are involved in family therapy et cetera. What you would not want to do is you would not want to have a separate lot of therapy or work going alongside. We are talking about the Every Child Matters agenda where we focus services. Have you given that consideration? Has there been any research into that?

Mr Douglas: The research is not as strong as we would want it to be, certainly internationally and in some of our local research, but there is quite a lot of evidence that not many of these cases overlap, and some end up as public law cases, particularly after the children are separately represented. The vast majority are people nobody knew of before and, hopefully, nobody will know of again. They are people from a cross-section of society. I was talking to one practitioner the week before last who spent two hours on the phone with very, very senior staff in public sector organisations in this country, who would not agree on literally a simple contact arrangement. These were people who are bright, respectable members of society. You would not think it of them. You would think they would be highly reasonable and absolutely accommodating of their own children but, in the middle of a dispute like this, become eminently unreasonable. It is the period during which people are like this, and it is usually just a few months until they move on, but in some cases it can extend to several years. I think it is those cases, even though they are below the threshold for public law intervention, that we do need to bring into the wider system, for the children’s sake, even if they are below the threshold, otherwise they are certainly suffering considerable emotional harm by the dispute continuing for so long.

Chairman: I want to move on to the Family Assistance Order.

Q122 Ann Coffey: This is a problem with early intervention, is it not? It is in that period immediately while the relationship is breaking down that people become unreasonable. This is about more work for you. Witnesses this morning were recommending reform in the current Family Assistance Order, so it could be directed to require an officer of CAFCASS rather than a local authority officer to befriend, mediate and support in a family situation. What do you think about that?

Mr Douglas: The policy assumptions are that by not using professional time in these very difficult cases, and bringing them to a head much more quickly, and resourcing them at an earlier stage, that is where the resource comes from. As with any switch like this, it takes time and often needs transitional funding but certainly, over a period of time, I believe we can do a lot by some of the measures judges are currently taking, that we are taking together and, as Sue Arnold said, some of the measures in this Bill will. I think, not do anything necessarily new, but extend current judicial best practice on enforcement more consistently around the country. Again, that is, I think, equivalent to what is being contemplated in some places, which is a final hearing of some sort in a private law case, so that within perhaps nine months to twelve months a case is brought to a conclusion and not allowed to drift on. At the moment considerable resources go into working for many years with these most difficult cases. At the moment, as a policy assumption, greater use of Family Assistance Orders would support that overall switch towards earlier intervention, and the work we are doing at the moment is to try to make that stick in the most difficult cases, and time will tell whether we have been able to make as a system, not just ourselves, the switch from intervening too late to intervening much earlier.

Q123 Chairman: You would support the proposal that a CAFCASS officer could be involved to advise, assist and befriended rather than the local authority under the Family Assistance Order? I am conscious that this would have resource implications for you.

Mr Douglas: It could. There have been around 600 Family Assistance Orders per year for some time, and of course they at the moment assume consent. I think it is potentially a tool for working with some families we are involved with already as an enforcement measure. Whether you can enforce family support is another question, but I think it will be used in many of the cases we are involved with
already. We are in continuing discussions with the Department about our funding level, and we will have to monitor that over the months ahead and see how that goes, but we have to be, for professional reasons, highly supportive of the principle of Family Assistance Orders rather than three or four years of, frankly, going round in circles in some families.

Baroness Pitkeathley: We are in no doubt that our workforce has the skills to take part in that at an early stage.

Q124 Ann Coffey: I was going to ask you about that. I was going to ask you how easy it was to recruit people to do this kind of work.

Baroness Pitkeathley: We have difficulties recruiting in some areas of the country, like the whole of the social care workforce. It is under great pressure, as you will know, and recruitment and retention is an issue which is of great concern to both the board and management of CAFCASS. But again, I think it depends largely on the history of what has gone on in a place, what the relationships are like and, frankly, who the competitors are. We do have heavy expectations of our workers. They are very well qualified. We consider them extremely skilful, but I think Anthony would agree that there are huge recruitment problems in some parts of the country and in others we have no difficulty recruiting. That is the same as the whole of the social care work force, I would think.

Q125 Baroness Gould of Potternewton: Mr Douglas raised funding levels. Can I pursue that a little bit further, and perhaps raise what seems to be a bit of a contradiction? When CAFCASS gave evidence to the Constitutional Affairs Committee, you indicated that you would need more resources to develop the additional jobs that would be required under the Bill. In the explanatory notes to the Bill, it says "and it is anticipated that no additional resources will be needed." I do think we need some clarification as to exactly how you see taking on the additional roles and what additional resources will be necessary to make it work.

Mr Douglas: There are two points to be made. The first is on the Bill itself. I believe the regulatory impact assessment does give us the framework for applying for costs, or our proportion of costs incurred, new costs incurred, in those cases with a specific contact activity direction or a curfew order or a particular measure in this Bill. I believe the impact assessment will allow us to claim for that. The broader point is the one of the work with the families we have been talking about and the range of resources needed to really get to grips thoroughly with those. We have seen a great rise in cases where children have needed to be separately represented over the last year, and that is at the order of courts around the country, more in some places than others, but nevertheless, that is a very significant increase in our costs, because those cases take roughly three times the professional time that the traditional private law case costs. Again, in some of those cases, if we are bringing them to an earlier conclusion—and we need to do more research—that is not necessarily a great cost incurred measured over years, but it is certainly a significant demand, which we would want to keep under review, and I know departments are keeping under review. I would make those distinctions. I think the costing through the RIA is there for this specific Bill, which in my view will only be used in a very small minority of cases, but the wider point about intensive family work is still to be properly addressed.

Q126 Baroness Gould of Potternewton: Do you not perceive that there might be additional costs with drafting new guidance, collecting parental contributions, and monitoring the new regime? You will have a whole series of additional roles. Surely they are going to add to the cost?

Mr Douglas: I do not want to downplay those but I think the drafting of guidance is within routine management costs. I do not believe we are probably the best agency to collect parental contributions. That is still to be worked out. If I had a bill as a parent from myself or from my local family proceedings court, I might be more likely to pay the local court. There is that. Yes, there are always costs associated with new work but I believe that this Bill is mostly about giving judges and giving ourselves greater power to bring intractable cases to a proper conclusion.

Baroness Pitkeathley: Some of the work that is being done with early intervention, for example, does result in cost savings because you actually stop the intractable cases going on for years and years. We have to bear that in mind also.

Chairman: Can I move on to the regulatory impact assessment and then to enforcement?

Q127 Jonathan Shaw: In terms of funding and resources and standards, you have said that you wanted to spread good practice. One of the ways we ensure consistency of standards is an inspection regime. I understand that you are not inspected by the Social Care Commission, which obviously will become part of the wider part of all children’s services. Do you have any comment on that? Is that desirable?

Baroness Pitkeathley: I should make it clear we are very seriously inspected, though not by the Social
Care Commission. Our general feeling is that the place for inspection for us is within a child-centred service. That is what CAFcASS is and we would expect that that would be an appropriate place for us to be inspected.

Q128 Jonathan Shaw: Have you had discussions with the Department about that?
Baroness Pitkeathley: We are in discussion with our sponsoring Department about that.

Q129 Jonathan Shaw: We heard this morning about the menu of options that will be available in terms of enforcement, starting with therapeutic and then more punitive measures, which we discussed this morning. One of those would be a curfew requirement, and Dame Elizabeth told us that she may well mete this out as a punishment for a parent who is not cooperating. It is all very well for the judge to mete out the punishment; to ensure that the punishment is upheld, it needs to be monitored, and that falls to you. Please tell us how you will monitor that, or indeed, the unpaid work. We used an example of graffiti being cleared out from the local subway or dog poo from the local common. Tell us how your officers are going to monitor and enforce that. These are the realities, are they not?
Mr Douglas: They are, yes. Of course, many of our staff came to us from the probation service, where this was their core work for a period. I would say two things. Firstly, we advise courts and we advise judges. They do not have to take notice of what we advise. Our duty on, whether it is curfews, unpaid work, imprisonment, is to assess the impact of any enforcement or punitive measure on a particular child or children, and the impact might well be different even for children within the same family. So that has to be our focus. I think it would be in very rare circumstances that imprisonment would benefit a child. There are two cases we have been involved in recently in different parts of the country with the threat of imprisonment, both with girls of about seven years of age, where the resident parent was frustrating the non-resident parent. In those two cases, both with threats of imprisonment in one month’s time if contact was not facilitated, in one case the threat of imprisonment worked, and in the other it backfired and made the matter worse. You always come back to an individual child, an individual parent and estimating—easier with the power of hindsight than in advance—what the impact assessment of any particular measure is. Obviously, providers now, especially if it is electronic monitoring, have pretty sophisticated and automated routines, and if we were monitoring a curfew, it would be the provider monitoring it, and we would get pretty much an automated account of whether that was violated or not. I would say on curfews, the majority of arrangements we are involved with are not children being collected from the home. They are being collected from the homes of third parties or in public places.

Q130 Chairman: You mean that is where the problem is?
Mr Douglas: That is where the handover takes place, so the enforcing of curfews is complicated in family law matters. If we were to be advised of a breach of a curfew order, we would either take it straight back to court as a breach or do some work in conjunction with the judge about how we should best handle it. We always come back to the impact of it on an individual child. As for our own staff being involved in the monitoring of the success of a community sentence, I think others are far better placed and better experienced to do that. I think we would work with our colleagues in the probation service, who run community sentencing programmes day in, day out, to do that on our behalf, or on the court’s behalf.

Q131 Jonathan Shaw: Do you think penalties such as unpaid work or the threat of unpaid work will be a useful tool to concentrate minds in the early stages? That is what Dame Elizabeth was saying.
Ms Arnold: I think, from a practice perspective, that those would only be considered in an extreme case. I know that you are asking me whether I feel that would be advantageous. I think it is very difficult to say without citing a particular case. As I say, at the moment we do monitor. We have contact centres used as exchange places. We have good relationships, and the contact centre will notify us about when that has not taken place, so those processes are in place, but it is just taking them to extremes. I had a case where a mother went to prison. It ended very badly for the applicant in that case. It was not advantageous for the child. I think there could be other avenues. This may have been one of the extreme avenues explored prior to prison. The custodial sentence in that case was detrimental. It is quite a famous case. On reading the literature, I think there will be an extreme case and a situation for one family particularly that may benefit from that, yes, but I think they will not be used a great deal. That is my experience of practice in my area.

Q132 Chairman: I would actually urge you to look next week at the evidence given by Dame Elizabeth Butler-Sloss, because she did seem to be looking for a combination of punishment and incentive, and also recognising that the court does have a problem at the end of the day if someone is deliberately avoiding the court outcome. I understand from
what you are saying that if we did go down the road of, for example, a curfew or a community service order of some type, you would see that being enforced by someone else, but reported to you. Is that a correct understanding of your position?

Ms Arnold: As a practitioner, I think we would have responsibility for knowledge of whether that was working, etc.

Mr Douglas: There are contracts with experienced providers who do that very well.

Q133 Jonathan Shaw: A carrot-shaped stick to move people along a bit.

Ms Arnold: That particular case I was referring to, where a mother did go to a custodial sentence for a week, I think something like community service would have been—

Q134 Jonathan Shaw: —more appropriate.

Ms Arnold: Absolutely.

Q135 Chairman: One of the examples she gave, if I remember rightly, was the case of a mother who was required to keep the child in so that the father could collect him to go to a game of football, and when the father came round, neither mother nor child was there, which I would guess is not that atypical in difficult cases. I think that is what she was thinking of. How would you deal with that?

Ms Arnold: I actually spoke to a practitioner yesterday about this very situation, and she was saying that she would gladly, as we do with observed contact, be present at one of those exchanges. That is how dedicated our workers are, although they certainly would not be doing that on a longer term basis. If that was unsuccessful, I think we would be looking for a provider to process.

Q136 Chairman: The problem with that, in a way, is not only if it is unsuccessful but also that a parent who is being quite skilful, who is also the resident parent with the child, could play cat and mouse with you, could they not, and you could go on then having somebody round there and it not working? Do you not at that stage have to look at things like curfews?

Ms Arnold: Yes, yes.

Baroness Pitkeathley: But our workers are very skilled. They know how to play cat and mouse too, if you see what I mean. They are very skilled at this. But with the combination of punishment and incentive, the whole point is that it is going to depend on each individual case, and it is very, very difficult to generalise about that.

Mr Douglas: What we would emphasize is the importance of bringing a case to a conclusion, so that the emotional harm to a child does not carry on for years and years. I think the worry I have about any substantial flight to enforcement is if it is in the absence of a family support programme with families where that can better promote a longer breakthrough in the relationships between people. People go into prison, they come out in a matter of weeks, and that does not necessarily mean the long-term relationships are in any way significantly changed. They might harden. What might work in terms of facilitating contact in the short term, in the longer term there is no substitute for trying, through family support services, a mixture of services to get a break-through in people's relationships, and that is our bread and butter business, even if we try month in, month out, year after year, as we do in many cases.

Q137 Chairman: So you are looking at a more linked stage of development than we have had so far—that is really what you are saying to us—that means each of these stages are much more closely linked.

Mr Douglas: As is the transfer of residence from a resident parent to a non-resident parent, which we are beginning to see in more cases where there is implacable hostility or frustrating of contact. Sometimes the transfer of residence is the right thing to do, but if it is the right thing to be done, it needs to be done earlier rather than after two to three years. I think the emphasis we want to put with judges—and we can see it working in many parts of the country—is to work intensively in these cases and then to bring them to a conclusion in the least detrimental way for children within a year. I am certainly still seeing cases that have been going on for many years, and the damage to those children in the mean time is uncatalogued, but likely to be major.

Ms Arnold: We have a very positive case, a very hostile couple, and the situation there is that there has been a lot of input, a lot of agencies involved, a lot of therapy. There has been a threat of prison, and I do not think the threat of prison has changed that mother's ability to cooperate with contact. It has been her slow process of therapy, of cooperation with the court, with CAFCASS, and she has now cognitively changed her position, which is a benefit to the children. I do not think it was necessarily the threat.

Q138 Chairman: The problem with long-term processes like that is that actually the child is more entrenched in the situation where the resident parent has extended, if you like, their influence over the child and the non-resident parent feels that they are losing out all the time. Is that right?
Ms Arnold: That example is a baby was born and the father had not seen the baby from birth at all, and now has overnight contact one year later. A year is quite a long time, but compared to the one that is three years and the mother had been to prison, it is a balance. The workers doing those cases like the creativity, the flexibility that they can help these people change.

Mr Douglas: I would just say that day in, day out, we have children saying to us “I don’t want to go to see my father”—usually father; sometimes mother—and those are the child’s wishes and feelings, and often they have been influenced by the resident parent. There is no doubt about that, but quite often—and this is, again, bread and butter work—when we work intensively with the resident parent and the child, and sometimes the non-resident parent, we are pretty successful a lot of the time in breaking that down and in re-establishing contact.

In one of our local studies, the 42 per cent of fathers who were not getting contact before work with us went down to 0.6 per cent, and we have sample studies like that, but that very small group of cases that are left are the ones where I think your Bill may achieve just another part of the toolkit to work with.

Q139 Chairman: A final question on enforcement. Can you see any use at all for electronic tagging in breach of orders?

Baroness Pitkeathley: There are already some examples. I guess our answer to that would be the same as our answer to the other things. It might be part of the toolkit in some extreme cases, depending on the nature of what was going on in that family.

Mr Douglas: In cases where we cannot get at the truth, who is telling the truth of who is where when, which is quite frequent, and that goes round and round, that may give a clear, scientific evidence base for who is where when, because they cannot be in two places.

Q140 Chairman: But it would be very exceptional, in your view?

Mr Douglas: I think so. On the whole, it is why somebody is not where they should be, and persuading them to be where they should be for their children’s sake that is the big question to get right.

Q141 Baroness Nicholson of Winterbourne: I wanted to ask Mr Douglas this: if there is a foreign adoption element in a disruption of family life, does this present you with different or additional professional challenges? Will these have additional or the same resource implications?

Mr Douglas: They are quite rare and very worrying cases when we come across them, but our staff, our practitioners, are experienced in both public law adoption work, in which our guardians have been involved ever since the guardian service was set up in 1984, and in private law work through step-parent adoptions and other types of adoption. With inter-country adoption, there are many specialist advisory groups around the country to draw on, but they do present particular difficulties to put on top of others. I think the concerns we have generally about children’s keeping in touch with their heritage or their identity when they have moved on to new parents, many of the professional challenges are the same, and as with these cases, the number is not yet significant enough coming through our doors to be more than concerned about at particular times of the year, in particular places where inter-country adoptions peak.

Q142 Baroness Nicholson of Winterbourne: Within the context of your new responsibilities in this legislation, would you have the resources or see a role? If an inter-country adoption case comes in front of you and is disrupted, do you or could you assist the child in regaining or maintaining contact with their original family of origin?

Mr Douglas: We are involved in a number of those cases, and always have been, through our work in our legal service with the High Court, and of course, those are some of our more difficult cases, sometimes involving assessments overseas, DNA tests, a whole range of tests and assessments, but our staff who specialise in overseas work, who have always worked with the High Court judges, previously in the Official Solicitor’s Department, in those international cases, certainly have the expertise in international cases to do that.

Q143 Baroness Nicholson of Winterbourne: I see that the guidance notes in the draft paper on adoptions with a foreign element, in particular the explanatory notes and guidance on the European Convention on Human Rights, discuss the Article 6 and Article 8 rights with relation to the prospective adopters. Do you feel, in the light of what you have just said, that there should be some comment or provision built in that the Article 6 and Article 8 European Convention of Human rights requirements should be considered with regard to the child?

Mr Douglas: From a professional angle, undoubtedly. I think those offer great rights and protections for individual children.
Baroness Pitkeathley OBE, Mr Anthony Douglas
and Ms Susan Arnold

Q144 Chairman: I would like to thank you, but before you leave, can I say this to you? We are all looking for some pretty fundamental changes in the way this work is done. We know we are perhaps not doing it as well as we could do, and CafCass is at the centre of that. Unless you can rise to the challenges of that, then, frankly, we will not achieve the changes we want. I would very much welcome it if you would go away from this meeting and think through anything that you think should be in the Bill that is not already in it, or anything that you have not said to us today that you would like to say, or indeed anything you would like to elaborate on, and then write to us. We really do want that from you.

Baroness Pitkeathley: Thank you very much, and indeed, we are preparing written evidence to give to your Committee.

Q145 Chairman: Thank you very much. Do look quite creatively at it. There are things that are not in the Bill. We have not mentioned this afternoon, for example, the role of grandparents and issues of that nature. You might want to address that, but you might also want to look at what was said this morning.
Baroness Pitkeathley: We will.
Chairman: Thank you very much indeed.

Memorandum by Relate

— Relates current work would confine it to responding to the questions about child contact.
— Our response is based on our experience of working with separating and divorcing couples for over 60 years (see section 1)
— We draw conclusions from the work being undertaken for the DfES “Family Resolutions” pilot (see section 2) and the small amount of evaluation undertaken to date (see section 3).
— We also offer research undertaken in the field of contact and residence disputes that would support our conclusions (see section 4).
— We recommend a model of therapeutic mediation that we believe would extend the Family Resolutions pilot and create even better outcomes for parents and children (see section 5).

Relate has answered the following questions from the Joint Committee [see below]

1. Whether the proposed contact provisions, including enforcement, are appropriate and proportionate (footnote 1).
2. Whether contact activity should be enforced (footnote 2).
3. Whether the proposed contact proposals, including enforcement, are sufficient (footnote 3).
4. Whether the draft Bill’s proposed outcomes could be achieved through better means (footnote 4).

1. Relate is the largest UK provider of relationship support to people throughout their lives. We work with children and young people through to grandparents, and our work is dedicated to helping people to understand and make sense of all of the relationships around them, as well as giving them information, skills and the confidence to sustain healthy and committed relationships in their lives.

We see 140,000 clients every year, and over three million people visit our website for information, advice and support for their relationships.

2. Some of the people that we see are in relationship difficulty. Separating and divorcing couples are referred to us from a variety of sources though most are self referred. We are contracted to offer our services to people in contact and residence disputes through the DfES pilot named “Family Resolutions”. This pilot project is the best example of contact activity for people who are using the court process that Relate is currently involved with. We believe that, within its limited remit of providing an understanding of the impact the dispute has on a child and offering some skills to support parents to co-parent effectively, it has so far proved to be an appropriate activity1.

This project is aimed at supporting parents who are going through the courts offering them the opportunity to attend two group sessions to look at the effect of their dispute on their children and giving them the skills to resolve their dispute without recourse to the court. Each parent is sent to two sessions—one group of two sessions is for men and one group of two sessions is for women.

1 Theme 1 of Committee Inquiry.
The project has been running for some three months in London, Brighton, and Sunderland. 22 couples have been referred to the group sessions to date. Before a referral can take place, a screening for domestic violence / child abuse is undertaken and as a result of this, a large majority of cases have been deemed unsuitable for the group sessions. It is our understanding that the incidence of reported domestic violence within the project is higher than expected. Relate is not currently involved in supporting the cases where domestic violence / child abuse has been reported but believe that this issue needs further consideration.

Of the 22 couples referred, six couples have dropped out (one did not want to attend and five reported domestic violence just before or during the sessions as a result of a misunderstanding in one of the courts about appropriate referrals). This would suggest to Relate that the voluntary nature of the referral process is successful so far. We would hope that couples will not need to be ordered to attend this contact activity because we have concerns about whether they would achieve the desired outcomes in the two sessions offered if they were made to attend. We are involved in other “ordered activities” through Youth Offending Teams where we offer parenting programmes for parents on parent orders. These programmes are usually 10 weeks long and it can take up to six weeks for parents to settle into the programme if they were unhappy about being sent. We believe that a two session programme through the Family Resolutions project may have different outcomes because of the limited time allocated for people who may not wish to be there.

Of the 15 couples that have attended sessions, evaluations have shown one couple that now have withdrawn from the court process as the couple are able to resolve their dispute. The remaining 14 couples say that the sessions have been positive, though not sufficient in length and as a result they are still currently using the court process to resolve their dispute.

3. The DfES are undertaking a full evaluation of the project through the University of East Anglia. In the preliminary evaluation undertaken by Relate two issues have been raised by a number of session participants and facilitators. The first is the timing of sessions—currently run between 7–9pm. Participants report that this time is inappropriate as it is a time when alternative child care arrangements are difficult to make. The second is the number of sessions, which participants say are insufficient. Participants report the need to talk about how they feel about their own situation and particularly their ex partner and there is not the time allowed in the schedule to do this. As a result the sessions can be hijacked by one participants need to “let off steam” according to the facilitators. Many report that the sessions need to be extended if the project is to have a higher success rate.


Trinder et al suggest that early intervention in cases could prevent disputes becoming further entrenched. The issues that this intervention should address according to this piece of research are collaboration, trust and empathy towards each other as co-parents and to their children. These issues are not and cannot be addressed by group sessions.

Further research undertaken in 2004 (Smart and May, Why can’t they agree: The underlying complexity of contact and residence disputes) suggests that the courts are simply unable to offer the kind of emotional support required by ex couples as they go through the courts. Unresolved anger between the ex couple remains central to their concerns about contact and residence and ex partners must be supported to resolve or manage this anger if any contact or residence agreement is going to stick.

Indeed the view has grown that to persist in adult focused arguments is to engage in behaviour that is harmful to children (Kaganus and Day, Contact and domestic violence, Family Law 30). Currently, however, there is no one inside the courts who is able to offer a therapeutic intervention to support these ex couples because the legal process is not designed to solve essentially non legal problems. Smart and Wade conclude “Acknowledging and dealing with the ethical and emotional conflicts between parents, rather than insisting they are ignored for the sake of the children, might actually produce a system that will be more attentive to the long term welfare of children”.

Professor Jan Walker has also produced some valuable research for the DCA (Picking up the Pieces, 2003). This research suggests that the people who used mediation at the time of the separation or divorce in her study were less satisfied that it had helped them than the group of people who went to a relationship counsellor.

Dealing with unresolved emotional concerns seems to have produced better outcomes in satisfaction though there is no evidence that this alone will ensure a resolution of contact and residence, as there is still a need for the skills of a mediator to help in the resolution of these issues.

---

2 Enforcement of contact activity.
3 Theme 3 of Committee Inquiry.
5. Relate believes that the combination of relationship counselling and mediation into a new offer of therapeutic mediation (currently widely used in the United States) would be highly effective. We would be delighted to support the DfES in designing and delivering a therapeutic mediation model pilot that would support ex partners to become collaborative co-parents after separation or divorce. We believe that this pilot should run alongside the family resolutions pilot as we know that people also need to understand the impact of their dispute on their children and learn some of the skills that the pilot offers to help them to resolve these disputes.

Angela Sibson
Chief Executive, Relate
22 February 2005

Memorandum by the UK College of Family Mediators

SUMMARY

The College generally welcomes this Bill as one part of a programme of measures intended to improve support for families involved in separation and divorce; it proposes some minor amendments to the proposed legislation, and reiterates the need for these proposals to be seen in a wider context of continuing support for mediation.

WHO’S WHO

This evidence is presented on behalf of the UK College of Family Mediators by:
Karin Walker, Vice Chair of the UK College of Family Mediators and a practicing family mediator (and family lawyer) currently mediating in Surrey; she trained as a family mediator with Resolution (formerly the Solicitors Family Law Association); and
Anna Bloor, Governor of the UK College of Family Mediators and a practicing family mediator (and non practicing family lawyer), currently mediating in Sunderland and south Tyneside; she trained as a family mediator with National Family Mediation.

1. GENERAL RESPONSE

1.1 The College is supportive of any steps taken by the Government which improve arrangements between separating parents and their children. Positive parenting arrangements form the basis of a stable future society.

1.2 The College believes that the success of the measures outlined in the Bill will rest on the whole Government programme of which this Bill is one part: on the development of better information for separating parents, on continued support for mediation and greater use of ADR procedures, on the better management of court cases, and on the better availability of support after settlement.

1.3 The wider measures are welcomed in themselves; they will also have a bearing on the success of the Bill because they contribute to changing the general understanding about how family disputes should be resolved. The measures in the Bill are unlikely to be sufficient in isolation. The College believes in particular that there must be continuing and constant encouragement to families to mediate their disputes, before court proceedings if possible, but if necessary during those proceedings and even after their conclusion.

1.4 If the measures are to be successful there must be clarity as to the role of all agencies involved and how they interrelate. All agencies, including CAFCASS, must work to consistent standards throughout the country. Information must be readily available to the public and all services must be available nationwide.

1.5 The College welcomes contact activity conditions/directions which are likely to be helpful underpinnings for more constructive contact. Family mediation, as “a process in which an impartial third person assists those involved in family breakdown... to reach their own agreed and informed decisions” (College Code of Practice), will come within the definition of a designated “other activity”. The College would however welcome a specific reference to family mediation requiring both parties to attend a meeting to find out more about the mediation process and information about other agencies which clients might need to access.

4 Theme 5 of Committee Inquiry.
Mediators work with parents to reach agreement about contact but also to improve communication and reduce conflict.

1.6 There must be clarity about the difference between “in court conciliation” and mediation. A settlement achieved in the shadow of the courtroom is unlikely to work in the same way as one formulated through the mediation process away from the pressure of the court procedure. Clearly CAFCASS officers need to assist disputing families but one key role may be to refer such families to mediation. Discussions between parents in mediation are confidential and legally privileged. Discussions facilitated by CAFCASS officers are not legally privileged.

1.7 The College welcomes the provisions for facilitating and monitoring contact. The role of CAFCASS officers will need to be clearly defined and due consideration must be given to the basic mechanics of a contact arrangement and how the arrangements will actually work in practice.

1.8 So far as enforcement is concerned there is an obvious need for caution particularly in relation to proposals for a curfew requirement and electronic tagging. Enforcement should be a last resort and account should be taken not only of the welfare of the child but also of the impact on the child of increased conflict due to increased resentment.

1.9 There is no indication as to which agency or agencies will be responsible for enforcement. Again careful consideration must be given to the mechanics. Is it envisaged that enforcement will apply not only to the parent who refuses to implement the contact arrangements but also to the parent who does not take up contact which has been arranged?

1.10 The role of CAFCASS appears to have been extended by the proposals, facilitating and monitoring orders and potentially enforcement. To manage this, increased resources will be required.

1.11 The College notes that there is a proposal that parents, where able, should pay for activities when subjected to contact activity directions. This may be almost impossible to implement and may cause a level of resentment which could be directly adverse to that which the Bill seeks to promote.

1.12 If the measures are to have overall success, careful consideration must be given to the detail of formulation, implementation and subsequent enforcement of all arrangements so that no stage is left without specific definition and there is understanding of the importance of implementation and method of enforcement if appropriate.

2. Specific Questions Posed by the Committee

2.1 Lessons from experience

2.1.1 Parents are individuals who will be at different stages of the separation process and support must be tailored to individual needs and allowance made for the time it may take to absorb information and use support in a way that will enable behaviour to change and allow parents to take responsibility for their own behaviour.

2.1.2 They can be subject to extreme emotions of anger and distress and need support to consider their children’s needs as opposed to their own individual needs.

2.1.3 Parents must not be made to feel victimised in any way or totally inadequate. They need to understand that parenting when apart is very different from parenting when together.

2.1.4 Support, classes and information should be provided in appropriate venues, wherever possible away from the court setting.

2.1.5 It is important to take account of the impact of wider family networks, particularly grandparents, on parents’ ability to change their behaviour.

2.1.6 It is important to take account of the impact of financial matters on negotiations about contact, particularly where a parent and children may be facing the prospect of moving home and where financial support is not being given by the non resident parent.

2.1.7 Arrangements for contact must be detailed and precise where parents are in conflict.

2.1.8 Ideally, support and information should be given to parents long before court proceedings begin and attitudes have hardened.

2.1.9 Parents should be given a realistic expectation of what a court can/cannot do.
2.2 Likely effectiveness of current proposals

2.2.1 The College believes the proposed measures can be effective subject to the comments made elsewhere, in particular in 2.1 above.

2.2.2 The College welcomes the general intention to provide better information to parents—well before they reach the court. The College particularly welcomes the possibility currently under DCA consideration that there will be generally available and easily understood leaflets, pointing the way to an accessible helpline. These measures will in due course have their effect upon a general climate which will affect those who do go to court. The College welcomes a range of measures intended to ensure that the public is much more aware of constructive alternatives to litigation.

2.3 Definition of “contact activities”

2.3.1 The College would welcome the inclusion within the definition of contact activity (Draft Bill 11E (1)(b)) a specific reference to family mediation as follows: “attendance at an initial assessment meeting to find out more about family mediation”.

2.4 & 2.5 The Family Resolutions Pilot Project

2.4.1 The College generally welcomes the proposals for the “family resolution pilot project”, including procedures to ensure that parents are informed about the impact on and meaning of separation for children and to consider ways of dealing with conflict. But such measures on their own may have limited value—and there is reason to be cautious about the value of standardised group information sessions.

2.4.2 The College’s main concern is that “in-court conciliation”, which is not legally privileged, may be seen mistakenly as a substitute for mediation, and the damage that such a misperception could cause to the potential for the wider use of mediation.

2.4.3 It also believes that the role of the CAFCASS officer who works with the parents on their parenting plan and the role of the CAFCASS officer who prepares a court report (if required) should be carried out by different personnel and kept separate.

2.4.4 It is concerned that there may be a potential problem in the redirection of so large a part of CAFCASS’s resources if such procedures were to be established on a widespread basis.

2.6 Government’s possible loss of enthusiasm for mediation

2.6.1 The College has no reason to believe that the Government has lost its enthusiasm for mediation. The Green Paper is explicit about the the Government’s continuing support for mediation as a means of resolving family disputes. In recent meetings with family mediators Lord Filkin, Parliamentary Under Secretary of State at the DfES, has emphasised the Government’s continuing commitment to mediation, and pointed to the development of new provision which will increase awareness of mediation amongst the public. The College also notes that a DCA minister will be launching the new “National Mediation Helpline” (for civil mediation disputes) in March, and that a parallel family mediation helpline is being considered. It notes too the developing prominence being given to mediation suppliers in the LSC’s Family Advice and Information Service initiative.

2.6.2 If there is any “appearance” of a lesser enthusiasm for mediation—and perhaps not just on the part of the Government—it may be because of the unrealistically enthusiastic expectations underpinning the development of mediation in the 1990s. In family mediation in particular there were considerable injections of start-up money into mediation provision and training, which resulted in dramatic increases in the number of mediations and mediators. The rate of change was unprecedented; the expectations correspondingly intense. But the rate of increase has slowed—as was inevitable. It is this decline in the rate of growth that may have fuelled a sense of lowered expectations. But if that is so, mediation is the victim of expectations that were always unrealistic. Cultural change—and seeking to change public expectations about the way to resolve disputes is to promote a cultural change—is not quickly achieved.

2.6.3 It has been an achievement that mediation is now nationally available and firmly established. There is no reason to think it will not continue to grow steadily in the public’s awareness and acceptance. But it must continue to be given the appropriate underpinning; the proper support of all those involved in the family justice system (solicitors, barristers, magistrates and the judiciary as well as government) and the promotion of family mediation are essential, and this will continue to require resources. The College welcomes the Government’s stated intention to continue such support.

19 February 2005
Examined of Witnesses

Witnesses: MRS GRIZELDA TYLER, Chair of Trustees of Welcare Accord Centre, Kilburn; MRS BEVERLEY BROOKS, MBE, Chief Executive, National Association of Child Contact Centres; MS ANGELA SIBSON, Chief Executive, Relate; MS KARIN WALKER, Vice Chair of Board of Governors, UK College of Family Mediators; and MS ANNA BLOOR, member of the Board of Governors, UK College of Family Mediators, examined.

Q146 Virginia Bottomley: Thank you very much to Relate for your written evidence. We would really value it if the others could give us their written thoughts as well. It makes a huge difference. Would you be able to tell us about the extent of your provision, say, for example, contact centres? I do not think all of the Committee have a real sense of how many there are and how much of the country has access, and whether there are some terrible gaps. My question to you is, on the basis of your considerable experience between you all, what are the lessons that you can give us in terms of mediation and child contact services and centres which would actually be applied to the contact activities proposed in the Bill?

Ms Sibson: The starting point for that is, when we are dealing with these matters, we are dealing with the fundamental instincts of people to pair and to dispute. I do not think that using enforcement or curbew or tagging, or whatever it is, is ultimately going to resolve the problem. I think it may be dealing with the presenting problem; it is not dealing with the real problem. The underlying problem is the breakdown of the family relationship, and until you resolve that within the family, within the contact setting, the other stuff is simply window dressing because, certainly from the Accord’s point of view, the parents who are coming to the Accord are basically out to get each other really, and the child is a pawn. You have to break through that. You have to get the parents to accept that their behaviour is damaging their child and, once you can work with that, the rest falls into place.

Q147 Virginia Bottomley: But it would be fair to say, would it not, that Relate is very much an agency that helps the motivated?

Ms Sibson: That is a very interesting question. I am not sure I agree with it. People tend to come to Relate because of the knowledge they have of what we do, as in Relate equals relationship crisis. It is the name that brings people to us rather than the motivation to do anything. Indeed, many people when they come to us have very little idea of what it is we actually do. They just know that, if you are in trouble with your relationship, Relate is the place to go. I would say from the feedback we have from working with people that they are surprised at how down-to-earth our advice is, how practical it is, and how in fact they are able to change their awareness of situations and to learn new skills and points of view.

Q148 Chairman: Can you elaborate on the contact activity that is proposed in this Bill? You are involved in some situations which might pull you right into that. Do you think what is in the draft Bill here can work? Is it right?

Mrs Tyler: No. At the Accord centre we deal with the hard end, the entrenched cases of contact dispute. I do not think that using enforcement or curfew or tagging, or whatever it is, is ultimately going to resolve the problem. I think it may be dealing with the presenting problem; it is not dealing with the real problem. The underlying problem is the breakdown of the family relationship, and until you resolve that within the family, within the contact setting, the other stuff is simply window dressing because, certainly from the Accord’s point of view, the parents who are coming to the Accord are basically out to get each other really, and the child is a pawn. You have to break through that. You have to get the parents to accept that their behaviour is damaging their child and, once you can work with that, the rest falls into place.

Q149 Chairman: Leaving aside the question of enforcement though, which is what seems to be troubling you, the contact activities aspect of the Bill does or does not trouble you?

Mrs Tyler: I do not think it is quite clear in the Bill what contact activity is. Is it a session of contact sessions within a supervised contact centre, which is what we are? If it is, there is a lot of work that needs to be done before those contact sessions get going. You need to work with the child individually, you need to work with the individual parents, to see whether or not contact is right. The father or the
Q150 Chairman: Do the others agree with that or do you have a different view?

Ms Bloor: From the point of view of family mediation, we would like to make the point in respect of contact activity that we think that that should actually include a referral out to an initial assessment meeting at a mediation service, and that would be directed to both parties, which would enable them both to consider mediation as an option for resolving contact disputes, and that could be done by amending section 11 of the draft Bill. We think it is really important that mediation is considered before, during and at the end of court proceedings. There are referrals out to mediation services currently during court proceedings and at the end of them, but we would like that to be on a more consistent basis. As mediation services, we also recognise that work needs to be done with parents, and a number of mediation services not only help parents to reach agreement but they work with them on communication and to resolve conflict and, where necessary, refer them on to other sources of help. In fact, some services offer child counselling under the support work.

Q151 Chairman: Would you want the court to insist that a couple go to at least a talk about mediation or what?

Ms Bloor: What we are asking is that the court is able to make a direction to both parties that they go to an initial assessment meeting to find out about mediation, with the expectation that they would use the mediation service, but it would not actually be compulsory.

Q152 Virginia Bottomley: Could each of you answer the question about the extent of provision? I am not clear as to whether there are areas where there simply is not any. The other thing is whether there are any elements of cost. For example, when they go to their mediation assessment, do they have to pay for that? Are there financial factors? I know with Relate that can be an issue.

Ms Bloor: Mediation is part of the Community Legal Service, so in fact, those clients who are entitled to public funding can obtain it for mediation. Those who are not have to pay.

Ms Walker: For those who are not, it is massively cheaper than going via the court process, and if people can be directed to at least consider mediation at an earlier stage, it takes them out of the court sector, which is where people get far more entrenched and get to the stage where the lady at the end was saying it becomes unresolvable.

Q153 Virginia Bottomley: I think the Committee appreciates that point. What about the extent of provision? Are there parts of the country where it is extraordinarily inaccessible?

Ms Walker: No.

Mrs Brooks: Our organisation has approximately 350 child contact centres through England, Wales and Northern Ireland. Probably a maximum of 50 of those are supervised, so there are many, many gaps. That is really the starting point. We are not starting on a level playing field here. The things that I just want to raise are about what lessons we have learned from our experiences, which are that there are great opportunities here for partnership working, but we have got to be absolutely clear about the extent of provision. We have got waiting lists. There are any elements of cost. For example, when they go to their mediation assessment, do they have to pay for that? Are there financial factors? I know with Relate that can be an issue.

Q154 Baroness Gould of Potternewton: I wonder if I may go back to the discussion about mediation, and look at the evidence that has come from Relate, where you quote from Professor Jan Walker, who suggests that people who used mediation at the time of separation and divorce in her study were less satisfied than going to a relationship counsellor. I wonder if you can just elaborate a little bit on that statement.

Ms Bloor: We are aware of Jan Walker’s research, clearly. I think the point about mediation is that it can be appropriate at different points in separation for different couples. Some may need to access it at an early stage in separation, some may need to access it later, and it is important that that is taken into account. I also think it is important that everybody should be made aware of family mediation but that it should remain voluntary for
those who wish to take part in it, as it is at the moment, providing they have adequate information about it.

Q155 Baroness Gould of Potternewton: Where would they get the information from?
Ms Bloor: The information can come in a number of different ways: it can come from solicitors, it can come from magistrates or judges if they are already in the court arena, it can come from CAFCASS officers if they are in the court arena, and at an earlier stage by doctors, health professionals and people like that who are aware of it.
Ms Sibson: Since the point was in our evidence, could I just say that I think the point that we were making there is that our own review of mediation, as carried out in nine localities in the Relate network, we have reviewed our own involvement in mediation, and come to the conclusion that we would want to develop a model that had some therapeutic element to it, because we believe that some element of that dissatisfaction is around the sort of work that we normally do that we could supplement mediation services with, and I think that is about sustainable behavioural change. That comes from people understanding their motivations and themselves and making different choices, and that is what we were pointing to there.

Q156 Baroness Gould of Potternewton: Do you think there should be reference to mediation in the Bill?
Ms Sibson: I am not sure that we would have a view about that. We would very much stick with the notion that it is important to have this therapeutic element to services for parents in these situations. Mrs Brooks: Just being really practical here, we hear from our parents, and you need to have information about mediation, and child contact services generally, in more accessible places, and I have written down supermarkets. This is where people are at, and the information should be there. If you go down the line and the information is only available through legal avenues, very often the mind is already set then, and that really seems to be too late.

Q157 Ann Coffey: There must be quite an overlap between what you are doing with couples when you are in mediation and what you are doing with couples when you are in counselling. A lot of the skills must be very similar and the boundaries cannot be that clear.
Ms Walker: Not really. When you are mediating, if there is a need for a counselling service, then you are going to refer the couple out to that, and it is a question of all the organisations working together, and whoever has access to the couple at a particular time looking at their specific requirements, so that the mediator is dealing with their areas of dispute and trying to resolve that, but if they have an emotional need for a counsellor or some other related services, they are directed to the best centre where that can be provided, be it Relate or wherever else.

Q158 Ann Coffey: Of course, I do understand that. It is a continuum, that as you go from talking to somebody about their own particular problem and then exploring further their reaction to that problem, you are going along a continuum.
Ms Walker: To some extent, but it is important to use the right person for the right problem.

Q159 Ann Coffey: What I was going on to say was, what we talked about earlier was this thing about intervention and putting services where children actually are and of course, as the Government is rolling out its children-centred programme, and also putting into children’s centres support for parents, do you think that is an appropriate place for the range of mediation/counselling/therapeutic services also to be based, so that parents can access services when they feel it appropriate, rather than going through old what is inappropriate referral?
Ms Walker: I think that is absolutely right.
Ms Sibson: I think we have to be cautious as well about dividing the services available to parents into silos, because it must be exasperating, if you are in great distress already because of the breakdown of something that is extremely important to you, to then be handed from a mediator to a counsellor. The difference may not be apparent to you in the distressed state that you are in. I think that is quite an important thing, that concern for the people who are going through the process and making sure that they do not feel they are being passed from pillar to post.
Ms Bloor: The family advice and information networks which are currently being piloted in various areas of the country start off with a diagnostic interview in which the person doing that interview actually looks at the needs of those particular parents and then signposts them to the most appropriate service, which is one way of dealing with that.

Q160 Ann Coffey: Do you consider that the measures designed to inform parents and facilitate contact in this draft Bill are likely to be effective?
Ms Bloor: I think that the measures are likely to be effective, but I think care needs to be taken in what form information is given, because if you give some parents very detailed written information it is very
difficult for them to take it on board, particularly at a time of distress and conflict. So I think different ways of giving information must be looked at.

Mrs Brooks: I think the parenting plan that we have been looking at is too much. When I was talking about it, it reminded me of my tax return. The guidance notes are so in-depth that you just look at them and then close them again. On the parenting plan there are something like 85 questions that you are supposed to sit down and go through with your partner. Some of those are about what to do with the cat during the holidays. You probably just want to shoot the cat! It is too much, it is too soon; it needs to be in bite-size chunks that people can deal with at their own pace.

Q161 Jonathan Shaw: Mediation: there is a menu of options that is available to the courts from the therapeutic interventions to the more punitive interventions. Do you think there is a sufficient range there?

Ms Sibson: It depends on whether you are referring to the list demonstrated in the Bill or whether you are referring to the availability of services once the courts will be looking outwards to access them. I think there are two different things there. It seems to me in the Bill that the options are very clear, and that seems to be a reasonable range of options. The hard question is where the rubber hits the road in terms of whether things are available when the courts want to refer people to them. Are the resources there? Is the right range of services there?

Mrs Tyler: Certainly from the point of view of the Accord, the parents that come to us, they go through the court system and the killer then is that the services are not available, so you have got them to the point of the court, you have managed to semi-resolve the dispute, but that needs to be followed up, and it needs to be followed up very quickly, otherwise the problem becomes more entrenched and the damage to the child is even greater.

Q162 Jonathan Shaw: Do you agree with the idea that it is easy to foresee a situation where some useful activities are proposed and they are not available, so very quickly you are at the punitive end, which may be necessary in some cases, but it is not desirable to move rapidly to that point if the quality services are not available within your local area? I wonder if you have any comment. It is important to see these types of services in the broadest sense along with all children services that are available locally, and it should not be somehow separate and therefore should be inspected as part of an overarching regime to ensure quality.

Mrs Brooks: Two points. I think the raising expectations without having a full plan, including the finances, is where we have been and we do not want to be there again. For instance, the Child Contact Centre Implementation Group, which I chair, a multi-agency group, raised in 2003 that it would cost approximately £8 million per year to fund child contact centres, and now the new funding, which is £7.5 million over two years, is supposed to be for those same services, but also all these additional, new services as well. It does not add up, and this is our concern. In fact, it could even have the detrimental effect of breaking the back of the services already here. Can you just repeat the last part of your question?

Q163 Jonathan Shaw: I am interested to know whether the availability of resources and services to the courts should be part of the universal integrated services that the Government are talking about in terms of other children's services, and this should not be somehow separate from that.

Mrs Brooks: I think the linkage is in the partnership. It is not about lumping them all together, because you have great value in the voluntary sector and the statutory sector and the neutrality that goes with that. I think the key is the linkages between those organisations and the willingness of those organisations to work together. One of my concerns was around the fact that this is for private law. There is a strategic implication that if children's trusts, for instance, are asked to be the provider of contact activities, they need to look at what is already there within the voluntary sector, and that is not really happening at the moment. I would say, from my point of view, I have a real role there to raise the profile, but we must make sure that each service is valued and enhanced, not just put together in one big bag.

Jonathan Shaw: The local authorities have a duty to promote the wellbeing of children, and that does mean that they have to engage with other agencies, including the voluntary sector. During the course of the Children Bill this issue was not given a great deal of air time.

Q164 Mr Chidgey: This is a slightly different subject actually, but it is hopefully relevant to this exercise. It seems to me one of the major issues that provide an obstacle to contact is the question of children's safety. I noticed in our preamble here, Beverly, that the National Association of Child Contact Centres promotes safe child contact within your national framework. I also noticed that in the briefing from Relate you talk about not currently being involved in supporting the cases where domestic violence or child abuse has been reported
but—and this is a key point—you believe that this issue needs further consideration. I want to ask a couple of questions in relation to that thought and whether or not this should be an aspect that should be looked at in the Bill, which, of course, does not cover this. We have some analysis here of applications for contact, and it appears, to me anyway, from what I have here, that safety concerns are one of the major issues in dealing and assessing applications for contact. I find the figures somewhat alarming and I wondered if you might be able to comment on it. It would appear that for the number of applications in 2003–04, something like 40,000, about a third of them, involved issues of safety, domestic violence or child abuse. I do not have any figures on the social demography of this country but that seems an awfully high proportion of families where there is domestic violence or child abuse, whether it is specifically related to their situation. So my questions really are, are these figures reliable? Is there a question here of allegations being made to create hurdles to potential contact from usually the father in this case? Is there anything that can be done within the context of this Bill to be more rigorous in assessing and determining the accuracy of the allegations that are made?

Mrs Brooks: From NACCC’s point of view, in 2002, which is when we had the first research, we decided that the safety of the child was absolutely paramount, and what we have done is we have taken national standards, that have been agreed by the Child Contact Centre Implementation Group, so multi-agency, and all child contact centres that are NACCC members have to undertake an accreditation. They have three years initially to undertake that accreditation, and instead of sitting on the standards, they actually have to prove that they meet all those standards. That is one thing that NACCC is already doing, and that is in the process. So every NACCC child contact centre will be accredited and approved, and that includes not only safety issues but quality issues as well.

Q165 Mr Chidgey: Could I ask Angela a question, because it is a particular point you have raised in your submission, that something more should be done. I would like to know what you think that should be.

Ms Sibson: We were surprised when we were working on the Family Resolutions pilot. The expectation at the outset was that it would be about one in three cases that would not be able to come to the work because of allegations of domestic violence. Experience has shown that it is higher than that; it is nearer two in three, which means that at the moment the experience of the Family Resolutions pilot is really quite modest. I think that on the face of it, if we remind ourselves perhaps that about 90 per cent of child contact is settled prior to getting to court—an awful lot of these people sort this out for themselves—it should not surprise us that in general terms, the incidence of domestic violence in these cases is higher. The process that we have designed for the Family Resolutions pilot is around raising awareness with parents of the impact of their behaviour on their children, and helping them to understand, and then helping them to develop the skills to behave differently. That has been crafted for groups of people where domestic violence is not an issue. Where domestic violence is an issue, that approach is not appropriate, and so what we would be saying is that we have already done some learning as part of this pilot scheme, but more needs to be done. That is about the fact that safety is quite a different issue from awareness and skills raising. I would want to write in with further evidence about that, because I do not want to sit here and produce short solutions now. I think there is more to be said and I think it is important that we get that right. I would like to make another point about that as well, which is that our practitioners have said to me that in a sense, there is a difference between parents talking to someone who is, say, a Relate counsellor, where there is an exploration within the therapeutic setting of what is happening in the relationship, and parents talking to people who are perhaps going to be writing reports on them, and they are aware of the implications of what they say in terms of access to their children or otherwise. I think this is a dilemma that we are still engaging with in terms of how we manage that, because clearly, a court is going to be interested in findings of fact about whether domestic violence is present or not. On the other hand, in a therapeutic setting we would be more likely to be working with what clients bring to us, and in a sense, the burden of proof is not something that you are engaged in totally in a counselling session; it is about working with clients. I think these are difficult dilemmas and there is more we could say.

Chairman: If you could write to us on that, I would be very grateful.

Q166 Mr Chidgey: In the context of that, it would be very helpful to know from you what you think could be done in the mediation process in this context.

Mrs Tyler: Just to put some flesh on your figures, we have 87 per cent of the families referred to us where there are severe allegations of domestic violence. We have linked up with an organisation in North West London called Aracas, where they run a perpetrators’ programme, and we are looking at doing joint work with them, so the perpetrator of
the domestic violence is worked with at the same time as us working on the problems of the contact, so that you are trying to come at it from two angles, and hopefully get some sort of resolution, but it is a major factor, certainly in supervised contact centres. **Ms Bloor:** Can I just say from the point of view of mediation that all mediators are actually trained to do domestic abuse screening and child protection screening, and that is done at an initial assessment meeting before clients move on to mediation and, if appropriate, they are screened out at that stage. **Mrs Brooks:** The Bill actually refers to “suitable providers” and I think that is too vague from child contact centres’ point of view, when they have worked extremely hard as a voluntary sector to meet an accreditation, and then the referrals, etc, are being sent to centres that are not accredited or belong to anyone. We would like to see that being much clearer as to what is a suitable provider.

Q167 **Chairman:** Presumably you would need suitably trained people to spot the problems. **Mrs Brooks:** Absolutely.

Q168 **Baroness Howarth of Breckland:** Angela has mentioned the Family Resolution project, and we heard this morning, and of course, I know from other contexts, that there have been difficulties with that project. You mentioned some of the reasons you think might have caused the difficulty. Would you like to expand and say what might have made this more successful, if you think it is not as successful as it might be, as you indicated, and what we might do to take it forward? **Ms Sibson:** I think it is proving the value of a pilot. Clearly, we are entering into new areas of the consideration of the emotional and therapeutic side of family disputes, family courts and that kind of thing. It is a good start but we would say that there are issues around domestic violence and child harm that still need to be thought through. The informal feedback—and I must emphasize this is not part of the evaluation or the study; this is just what people are telling us—is that the parents really welcome the sessions, the awareness and skills raising sessions. A tremendous amount of people say, “I wish I had realised this. I now see what needs to happen. This is a revelation to me.” But they are saying that they would like more, that the two sessions are not enough, so I am afraid we come back again to the resources for the whole thing. It is a revelation to me.” But they are saying that they would like more, that the two sessions are not enough, so I am afraid we come back again to the resources for the whole thing. It is perhaps an unwelcome point from the point of view of the Treasury but this work with couples and families in a therapeutic setting, in whatever way all of us work with families, is resource-intensive. A particular win from it has been the experience of putting parents in groups with other parents going through similar experiences, and also with the fact that in that group there may be somebody who is in a similar role to their partner, so they are able to hear the point of view of the other side, if you like, from somebody else. It seems to bring the temperature down. It seems to help people to really retain or regain their clarity about what is going on. I think many people are aware that they are falling short when they are angry and distressed and all the rest of it, but they just need help to clear the red mist, and we see that as really important.

Q169 **Baroness Howarth of Breckland:** You are actually reinforcing what we heard this morning, which is that people are not getting enough. How could these projects fit into the wider spectrum of services? How do the pilots fit into the wider spectrum of counselling, mediation and support services that we might hope to see in terms of contact? **Ms Sibson:** I think we have still to determine that, because I would say we are in slightly uncharted seas here. I think the key points about provision are that we have to make it really easy for parents to find the services. At the moment there is a huge amount of different provision. People are not clear whether it is a helpline or a listening service or a mediation and listening service helpline. People are not in the right state of mind to engage with the complexities of provision. I would be arguing very strongly for one really smashing, clear portal of advice where you think might have caused the difficulty. Would one really make a difference? Are they there to make you feel better so that you can engage with the court processes better? It is a revelation to me.” But they are saying that they would like more, that the two sessions are not important thing is that people do not feel they are being passed from pillar to post, as I said earlier. It is bad enough without all of that. There also needs, as I said, to be a clear understanding of what you can expect from this person that is talking to you. Are they a report writer? Are they an evaluator? Or are they there to make you feel better so that you can engage with the court processes better? It is a time when mistrust is very, very high on everybody’s
agenda. How can you build that trust so that people can really engage with a seamless process? I think we have to do more work to sort that out and put resources into it.

**Q171 Baroness Howarth of Breckland:** I have one question for Grizelda in particular, and it is about the enforcement issues, which are in the Bill, and clearly, the judges are quite keen on the enforcement bits and they are likely, I think, to be in the Bill at the end of the day. I just wondered how your kind of services, with which I am familiar, will then engage with those families who find themselves subject also to enforcement orders as well as needing therapeutic help. How do you see that combination?

**Mrs Tyler:** We would like a swifter initial referral to us to work with the family so that you have then got the healing and mending process, and the awareness-raising so that, ideally, you do not get to the enforcement stage. One of the problems with enforcement is that it is very open to manipulation by the partner against whom that is made. You can just imagine at the school gates, “Look what your Dad’s done to me,” or “Look what your Mum’s done to me.” This is what is happening, and so the manipulation goes on and in a way, it only serves to entrench the problem more, if you see what I mean.

**Q172 Baroness Howarth of Breckland:** Clearly, if there were enough services to do the preventive work to the kind of standard we would all like to see, but I think, as my colleague is suggesting, there are going to be situations that become really intractable, and where judges are going to be extraordinarily frustrated where women—and it is usually women—often for all sorts of reasons, are frustrating contact, and there might be orders at the punitive end, but those people will still need help. I just wonder how you engage with those people if you are dealing with the heavy end.

**Mrs Tyler:** Maybe it would have to be a two-track approach, basically, that one is almost dependent on the other, that the family have to come to the Accord, for instance, and have to go through the process and, if they do not, then you have the clout at the end; you have the enforcement at the end. So you have the carrot and the stick almost.

**Q173 Chairman:** The problem is, is it not, the difficulty that you have? I can see why you want to work on a purely voluntary basis. Everybody would want to do that. The problem is when one partner, very often the partner who has the child, sees an interest in maintaining and strengthening the link and creating more time to do it in. The child, who we often forget in this, is actually presented with the problem of saying “Why won’t my daddy or mummy come home?” and that very question itself tends to suggest that the non-resident parent is to blame, and the more you go on with that system, the longer you allow it to go on, the more difficult it becomes for the child as well as for the parents. Are you recognising sufficiently that there may be a degree of coercion that is needed in order to protect the child from that position?

**Mrs Brooks:** Then they have to decide whether or not that case should be at a supported centre or a supervised centre, and then we come back to the number of supervised centres that there are, and whether they are going to meet the needs, and clearly, they are not.

**Q174 Chairman:** Also, is the person going to go? What we face here is not just a question of resources; if the person does not go, if the adult does not go with the child, or whatever is required of them, what do you do?

**Ms Sibson:** I would just want to offer an insight from our practitioners as well about when they are talking about behavioural change, and this may be a contribution to the discussion. Our practitioners are likely to say, if, for example, they are dealing with someone who is finding parenting difficult, with poor behaviour, “Did it work, whatever you did? Did it work, and next time would you like to try a different approach?” So they are able to help with behavioural change. It seems to me that it is important to determine whether people are intransigent because they have got themselves into that situation and they cannot see how to row back, or whether they are genuinely intransigent. I think people can get themselves a very long way down a conflictual path and almost not see the route back out of that, and become entrenched.

**Q175 Baroness Howarth of Breckland:** It is really a hidden point you are making to the Committee, and I just want to help you to make it explicit, and that is about funding and the voluntary sector and the way the funds are made and the way you have to apply for funds. It might be that some of you may want to say something more about that, not necessarily now, but I think it is an important issue about the development and delivery of services in the voluntary sector, compared with the roll-out of millions of pounds’ worth of children’s centres in the statutory sector. I think that is a very important area if we are going to look for services.

**Mrs Tyler:** It is a major element.

**Mrs Brooks:** We shall certainly be including it in our evidence, and the key thing is that the voluntary sector does not mean it is free; it actually means that it is the voluntary sector. It may be run by volunteers, but those volunteers still have to be paid
for their expenses, for the renting of the church hall or wherever they are carrying out contact, and if those things seem to be pushed, we will push back. **Chairman:** I think you are right. Voluntary often means everybody sees it as free. Maybe you ought to change your name to the involuntary sector. Can I thank you all very much, but I would again urge you to look at the Bill, and if you think there are things that are not in there that could actually go in—remember, we can make recommendations about that—to write to us on that basis. Again, if there is anything you have not said today that you would particularly like to say, do write to us. Thank you very much.

**Supplementary memorandum by Accord**

I attended the Joint Committee on the Draft Children (Contact) and Adoption Bill on Thursday 24 February which I found very interesting. You suggested that we should put some of our evidence in writing to you and for that I am grateful. I shall try to be as focused as possible. I am enclosing some statistical information for you and also a judgement made on one of the cases with which the Accord has been involved as I think it demonstrates quite clearly the frustrations of the Judiciary with the current lack of resources.

I am Chair of Trustees of the Accord Centre and as such I sit on the CCCIG (Child Contact Centre Implementation Group) which was set up five years ago by the Lord Chancellor’s Department to look at and assess the availability of contact provision. The Accord Centre is a highly specialised supervised and assessed Contact Centre working with families and providing reports for Courts cases where the families are involved in entrenched contact disputes. Prior to attending the Accord Centre most of the families referred have run the full gamut of provision the Court has to offer and none of it has been successful—hence the referral to the Accord. Without sounding too pleased with ourselves the work of the Accord has been successful in bringing resolution to these families in the majority of cases. (please see enclosed statistics). The reason the work of the Accord is successful is that it addresses the underlying problems rather than just dealing with the presenting problem which is what the parts of the Act we were discussing does.

I understand the frustration of the continual flouting of contact orders but we would suggest that the way to resolve this in the best interests of the child is as follows.

1. In a case of contact dispute the family should be immediately referred to a supervised Contact Centre with a hearing with the same Judge scheduled for two months after the start of attendance at the Contact Centre. It should be made clear to all parties that attendance is not optional.
2. On the return to court a report will be presented by the Centre and depending on that report further sessions may be ordered, no contact may be ordered or if there is non compliance a fine may be levied and the case scheduled to return in another two months, again before the same judge. If there is still non compliance and the Contact Centre has not found any reason to justify this than it may be necessary to have imprisonment as the final sanction.

This course of action we believe is in the best interests of the child as it allows for real investigation of the contact dispute, to discover the true wishes of the child, rather than the dominance of either the estranged or resident parent.

I fully accept that this is the expensive option, at least in the short term: in the long-term it is both cheaper financially (see funding below) and far better for the child, and surely this is the most important factor.

**Funding**

Our suggestions and in fact those of the Bill will not work unless the Government is prepared to fund it. To give some examples of cost:

The Accord Centre costs approx. £275,000 pa to run (and that is without a Chief Executive as we cannot afford one and the duties are currently being carried by the Trustees.) In the current financial year 2004–05 we have received only £15,000 from the Government through the sustainability fund of £430,000 over two years to cover over 350 centres and administered by NACCC. The remaining £260,000 to run the Accord we have had to raise ourselves, as we have done each of the eight years the Centre has been running.

In 2003 a costing of the existing supported and supervised centres showed that £8,000,000 pa was needed just to sustain them, and a mapping study done by the CCCIG (see above) showed that these existing centres were simply not enough to meet the enormous need. For the coming financial years the Government is suggesting
a figure of £7,500,000 over two years. In my view this sort of support does not constitute a commitment to children and families in need.

An assessment at the Accord costs £3,900—we have recently had a case referred to us that had cost legal aid £1,000,000, the norm is £10,000 and upwards that has been spent in the courts before they come to the Accord. To me this is financial lunacy apart from the distress, damage and suffering that prolonged battles through the Courts causes.

We feel that the enforcement part of this Bill will not work and has not been really thought through with the best interests of the Child as the priority. This is a very difficult area and it is imperative that the needs of the child are paramount. These needs will be severely damaged and not helped by the proposals in this Bill which we believe actually humiliate and worsen the dispute rather than assist towards contact resolution.

Whatever decision is made we would plead that nothing is promised if the means to fulfil that promise are not committed at the same time. This may be rather a naive approach in the world of politics but in the world of doing the right thing for children and families it is absolutely vital.

Grizelda Tyler
Chair of Trustees
27 February 2005

### ASSESSED CONTACT

Statistical Information for the year 1 April 2003 to 31 March 2004

Last year we undertook 18 Assessments involving 23 children

Issues affecting contact include:

<table>
<thead>
<tr>
<th>Issue</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Domestic Violence</td>
<td>60 per cent</td>
</tr>
<tr>
<td>Mental Health</td>
<td>10 per cent</td>
</tr>
<tr>
<td>Abduction Threats</td>
<td>30 per cent</td>
</tr>
<tr>
<td>Drug/alcohol Abuse</td>
<td>15 per cent</td>
</tr>
<tr>
<td>Child Protection</td>
<td>5 per cent</td>
</tr>
<tr>
<td>Alienation</td>
<td>35 per cent</td>
</tr>
<tr>
<td>Parenting Skills</td>
<td>25 per cent</td>
</tr>
<tr>
<td>Conflict Resolution</td>
<td>100 per cent</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>10 per cent</td>
</tr>
<tr>
<td>Cultural Differences</td>
<td>20 per cent</td>
</tr>
<tr>
<td>Mental Health</td>
<td>10 per cent</td>
</tr>
<tr>
<td>Conflict Resolution</td>
<td>100 per cent</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>10 per cent</td>
</tr>
<tr>
<td>Cultural Differences</td>
<td>20 per cent</td>
</tr>
<tr>
<td>Child Protection</td>
<td>5 per cent</td>
</tr>
<tr>
<td>Alienation</td>
<td>35 per cent</td>
</tr>
<tr>
<td>Parenting Skills</td>
<td>16 per cent</td>
</tr>
<tr>
<td>Conflict Resolution</td>
<td>25 per cent</td>
</tr>
<tr>
<td>Sexual Abuse</td>
<td>10 per cent</td>
</tr>
<tr>
<td>Cultural Differences</td>
<td>20 per cent</td>
</tr>
<tr>
<td>Child Protection</td>
<td>30 per cent</td>
</tr>
<tr>
<td>Alienation</td>
<td>28 per cent</td>
</tr>
<tr>
<td>Parenting Skills</td>
<td>61 per cent</td>
</tr>
<tr>
<td>Conflict Resolution</td>
<td>89 per cent</td>
</tr>
</tbody>
</table>

Most children had not seen their estranged parent for sometime before being referred to the Accord Centre:

<table>
<thead>
<tr>
<th>Duration</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>One year</td>
<td>17 per cent</td>
</tr>
<tr>
<td>Two years</td>
<td>22 per cent</td>
</tr>
<tr>
<td>Three years</td>
<td>28 per cent</td>
</tr>
<tr>
<td>Four years</td>
<td>28 per cent</td>
</tr>
</tbody>
</table>

The children were between three and 13 years old. Prior to referral nine per cent had no previous contact with their estranged parents. All the others had sporadic and difficult contact within different environments eventually breaking down over a prolonged period of time.

All families have been assessed and our recommendations reported to Court. In all cases our recommendations have been accepted. Many families have a combination of outcomes:
Further periods of assessment ordered 50 per cent
Escorted outings 25 per cent

Ethnicity

Mixed race 27 per cent White British 36 per cent Bengali 18 per cent
British/Bengali 18 per cent Turkish/ 9 per cent Indian 27 per cent
Cypriot Somali 18 per cent Afro/Caribb 18 per cent
Algerian 9 per cent Anglo/Pakistani 9 per cent
Anglo/Irish 9 per cent

STATISTICAL INFORMATION FOR THE YEAR 1 APRIL 2003 TO 31 MARCH 2004

Last year we undertook 30 Observed Contacts involving 33 children. For the first time these included six families where we were requested to provide a full report with recommendations to the Court.

Issues affecting contact included:

Domestic Violence 40 per cent Parenting Skills 20 per cent
Mental Health 20 per cent Conflict Resolution 63 per cent
Abduction Threats 3 per cent Sexual Abuse 6 per cent
Drug/alcohol Abuse 60 per cent Cultural Differences 3 per cent
Child Protection 43 per cent Emotional Abuse 10 per cent
Alienation 20 per cent Learning Difficult 6 per cent
Schedule 1 offence 6 per cent Neglect 6 per cent

67 per cent of the children had seen their estranged parent within the last year with the remaining 33 per cent having had no contact for up to four years before being referred to the Accord Centre. One teenager of 17 years of age had never seen her parent and very quickly moved on to self management.

The children were between three months and 10 years old.

27 per cent of these families were referred to us by order of the Courts.

70 per cent were referred by Local Authorities across London boroughs and outside of London.

3 per cent were referred on by the Accord from earlier assessment.

There were significant differences in the type of contact they had previously experienced:

Supervised by a professional 50 per cent Unsupervised 3 per cent
Supervised by Family 3 per cent At other contact centres 0 per cent
Indirect 0 per cent None since family breakdown 17 per cent

Previous supervision by the Accord and re-referred 27 per cent

The families have a combination of outcomes:

Face to face contact achieved after 27 per cent
1-4 years without:
Further period of contact ordered by the Courts 3 per cent
Moved forward to escorted outings 27 per cent
Referred to Family Support Project for graduated handover 7 per cent
Referred back to court non cooperation 3 per cent
Referred to a basic supported 7 per cent
contact centre until children old enough to make decisions
Parenting skills Course 10 per cent
Moved to self management 30 per cent
Returned to Social Services 10 per cent
Adoption 13 per cent
Ongoing at the Accord centre 30 per cent

Ethnicity

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Per cent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mixed race</td>
<td>27 per cent</td>
</tr>
<tr>
<td>British/Bengali</td>
<td>18 per cent</td>
</tr>
<tr>
<td>Algerian</td>
<td>9 per cent</td>
</tr>
<tr>
<td>Anglo/ Irish</td>
<td>9 per cent</td>
</tr>
<tr>
<td>White British</td>
<td>36 per cent</td>
</tr>
<tr>
<td>Turkish</td>
<td>9 per cent</td>
</tr>
<tr>
<td>Somali</td>
<td>18 per cent</td>
</tr>
<tr>
<td>Indian</td>
<td>27 per cent</td>
</tr>
<tr>
<td>Cypriot</td>
<td>18 per cent</td>
</tr>
<tr>
<td>Anglo/ Pakistani</td>
<td>9 per cent</td>
</tr>
<tr>
<td>Anglo/ Irish</td>
<td>9 per cent</td>
</tr>
<tr>
<td>Afghan</td>
<td>18 per cent</td>
</tr>
<tr>
<td>British/Bengali</td>
<td>18 per cent</td>
</tr>
<tr>
<td>Turkish/ Afghan</td>
<td>9 per cent</td>
</tr>
<tr>
<td>Pakistani</td>
<td>9 per cent</td>
</tr>
<tr>
<td>Somali</td>
<td>18 per cent</td>
</tr>
<tr>
<td>Pakistani</td>
<td>18 per cent</td>
</tr>
<tr>
<td>Bengali</td>
<td>18 per cent</td>
</tr>
<tr>
<td>Anglo/Irish</td>
<td>9 per cent</td>
</tr>
</tbody>
</table>

Supplementary memorandum by National Association of Child Contact Centres

<table>
<thead>
<tr>
<th>Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>— General points:</td>
</tr>
<tr>
<td>— Only private law</td>
</tr>
<tr>
<td>— Strategic implications in that Children’s Trust may be asked to be providers of CAs and at present there is little knowledge of acknowledgement of the voluntary sector direct service providers for contact. NACCC to work on this.</td>
</tr>
<tr>
<td>— What is a contact activity—too vague.</td>
</tr>
<tr>
<td>— Is it an add on to contact—ie mediation or is contact itself (time with child) a contact activity—ie a programme of contact sessions—must be clear.</td>
</tr>
<tr>
<td>— If an add on then should be undertaken through partnership ie each organisation sharing its expertise. This would be a good step forward. Step 1 should be to see what and where this is already happening so as not to duplicate but to enhance.</td>
</tr>
<tr>
<td>— If contact sessions are part of contact activity programme then we need to be mindful of two things:</td>
</tr>
<tr>
<td>1. Capacity of Child Contact Centres both supported and supervised as there will be an increase in requirement</td>
</tr>
<tr>
<td>2. Co-ordinators right to say no—will they still be able to say no if a CA is ordered at a contact centre</td>
</tr>
<tr>
<td>— Best for child or not:</td>
</tr>
<tr>
<td>1. Best if contact time can take place whilst the resident parent is elsewhere ie community service.</td>
</tr>
<tr>
<td>2. Not good for the child if a fine has a knock on or detrimental effect on the child or on other children living with either parent.</td>
</tr>
<tr>
<td>3. What happens to parents under 18 if an enforcement order cannot be made?</td>
</tr>
<tr>
<td>— For disputes only:</td>
</tr>
<tr>
<td>NACCC feels that this could be widened to cases where parents consent to taking parenting classes for instance where the parent needs some help to engage with their child in order that the contact is meaningful for both child and parent. It is very difficult to get on some of these programmes and yet it feels like consenting parents may have less opportunities than disputing parents—more likely to succeed if consenting rather than imposed.</td>
</tr>
<tr>
<td>CA may be ordered to either party—Good but does this apply to areas where the child is desperate to meet the parent but the parent refuses to see the child.</td>
</tr>
<tr>
<td>— Person or organisation:</td>
</tr>
</tbody>
</table>
Can we clarify that the court order would in fact refer to the organisation providing the CA and not the actual name of the person (individual) security.

- Where the Bill refers to “suitable” provider—what is suitable—NACCC 350 CCCs are undertaking Accreditation agreed by multi-agency group including CAFCASS, DfES, S.S. etc. Is this the sort of ‘suitable’ referred to?

- CAFCASS monitoring
  - Monitoring is good so long as any absences are reported back to Ct within a short time and the case is not lengthened in time. What if parents do not attend? However, having read the Parental Separation Green Paper I thought the CAFCASS reports were reducing but the monitoring and reporting back seems to infer another report.
  - Can the providers be responsible for giving attendance details—NACCC CCCs can provide this information on attendance and already do?

- What happens after 12 months and who is then responsible. Will CAs be limited to a maximum of 12 months? One of the difficulties at the present time is who takes responsibility if there are difficulties with a family having contact sessions once it has been referred, especially if the family has a long-term situation.

- Equality of service:
  - What if parents agree that a programme of contact is in the child’s best interest then they may have to pay but if they dispute then they go through a CA and may get Legal Aid.
  - Less than 50 supervised CCCs in England and Wales—equality and access and waiting times will be unequal—starting point!

Answers to Questions given by Joint Committee at oral hearing

1. Clear boundaries between services so that mediation isn’t foisted upon parents who do not want it (South London)

- CAFCASS referred between mediation and contact but other organisations only referred a few—Stronger Links required.

- Sort out funds 1st so that promises aren’t made without a full plan ie actual costs of CCCs = approx £8 million per annum based on info provided in 2003 in response to CASC report. New Gov funding is £7.5 million over two years for contact services including parenting programme, perpetrator progs, mediation etc. The sums don’t add up.

2. Parenting Plans hardly mention contact centres and contact services. Information should be available in places where parents are at—not just at solicitors by which time minds are often already set. Supermarkets would be a good starting point—Sainsbury’s information points etc

3. No—too vague—see previous point on CAs

6. May be offered too late in relationship when minds already set therefore outcomes for funds put in equates to small outcomes only. CAFCASS didn’t get satisfactory outcomes and therefore put funds into CCCs through CAFCASS Partnership Fund to increase contact opportunities for children.

- Effects not immediate—not enough public awareness—not enough consumer choice earlier in the process.

- Difficult for solicitors to be mediators—decision made should be clients but solicitors also advise clients—is there a conflicting role—maybe a different firm of solicitors to mediate from where the client is.
I hope that the above is useful—the three main points being:-

— The Contact Activity is too vague and needs to be specific as to whether the contact session is an actual contact activity
— The word suitable needs to state what is suitable ie Accredited Child Contact Centres
— The funds available do not match the expectation to provide additional activities—this will weaken the child contact sector rather than strengthen

Thank you for the opportunity of giving evidence, it was both interesting and an honour to be involved in this important process.

Beverley J Brooks MBE
Chief Executive
National Association of Child Contact Centres

**Supplementary memorandum by Relate: Domestic Violence and the Family Resolutions Pilot Project**

**INTRODUCTION**

During the oral evidence session of the Joint Committee on the Draft Children (Contact) and Adoption Bill on 24 February 2005, Mr Clive Soley requested that Relate give written evidence about how domestic violence between parents who were applying to the Family Courts over residence and contact issues was affecting the Family Resolutions Pilot Project and what steps could be undertaken to resolve the concerns.

Relate is currently involved in the implementation of the Family Resolutions Pilot Project (FRPP). The FRPP is designed to offer awareness raising and skills training to parents. In the design of this model it was felt inappropriate for parents where one parent felt that their individual safety or that of their children was at risk.

One of the noticeable features of the this work of this pilot to date is that at the first stage of the process, a large majority of clients (approximately 70 per cent) are screened out of the next stages of the process, because of a report of domestic violence. Another feature of this work is that some people are not screened out at this first stage, and then have to be removed from the programme when domestic violence is alleged by a parent.

**THE DILEMMAS**

Relate has believed from the outset of this project that the safety of both parents and all any children are of paramount importance. Group programmes designed to consider children’s needs and offer skills based solutions for co-parenting are not appropriate in a context where safety is risked. This has been agreed by all concerned with the design of the project.

We acknowledge that it is in the best interests of a child that they remain involved with both parents (as concluded by the Court of Appeal considering the case *Re L* in early 2000). However, we believe that this should only be made possible once the violent parent has addressed the issues of their violent behaviour and we find that there is currently no opportunity for a violent parent to do this within the court system.

One of our concerns is that the Court processes are not designed to prioritise the task of addressing domestic violence. Relate has evidence that the Courts can overlook documented evidence of domestic violence and still allow contact between a violent parent and their children, despite the children being terrified of a parent (in this case, the father). We have case stories where the Police have offered their evidence of domestic violence to the Court and still contact has been allowed by a Judge.

The new National Service Framework for Children and Young People, and the DfES strategy for children, Every Child Matters both offer clear statements about children’s safety and the need for every agency to safeguard and promote the welfare of children and prevent the impairment of children’s health and development. Harwin and Hestor Pearson in “Making an Impact: Children and DV” say that the “clearest indicator of domestic violence is still a woman or a child saying that it is happening”.

Relate believe that some courts are still not adopting this child centred approach and as a result, domestic violence does not get properly assessed in the process. Judges are still referring cases to the FRPP in spite of confirmed domestic violence by either the victim / survivor or their children because the allegation has in their opinion no factual basis.
Where it assessed by the Judge to be factual, the parents are generally not offered the FRPP. There is evidence that some Judges have asked if the parents are willing to go to the FRPP regardless of the incidence of domestic violence and they have been allowed to go, despite our concern that this is not an appropriate referral. There is currently no systematic alternative option for a Judge to send someone to so that they can deal with their behaviour or that of their partner.

**OPTIONS FOR THE FUTURE**

Relate believe that there are good models of integrated family support from the USA that could be used in the UK. The Duluth Model (Minnesota) is one such model. Relate can supply further information about this model if required.

It prioritises the victim and any vulnerable young person within the family and would complement the Governments own strategy (Every Child Matters) and the subsequent Children’s Bill.

This type of model also uses a partnership approach between specialist agencies to allow each of the specialists to contribute from their area of expertise to create a holistic approach for the parents.

If this model is not used, another systematic approach to this problem of domestic violence must be adopted by the UK courts. At the heart of this system we should be communicating to parents that:

— Their children need them to be involved in their upbringing.
— Their involvement must be safe.
— The perpetrator of domestic violence must acknowledge and address their dangerous behaviour to the other parent.
— Their involvement with their children cannot be effective whilst their behaviour is frightening and threatening to the other parent.

**HOW COULD THE PROCESS WORK**

The UK courts need a system where individual interviews are undertaken with each partner to specifically identify any aspects of domestic violence. These interviews MUST be conducted by independent and trained specialists who can ask the probing questions to ensure the acknowledgement of domestic violence where it exists.

Relate has experience of undertaking these individual assessments for domestic violence. We have been running a pilot project within Relate to understand the most appropriate model for working with our own clients where one partner alleges domestic violence. We have found that and we find that most perpetrators will acknowledge their violence in this setting and we have been able to identify that they are considerably more likely to inform us during an individual assessment than if they were in a group or couple counselling session. A copy of the assessment paperwork that is used for this individual assessment is attached to this briefing. It must be clear that this assessment needs to be undertaken by someone who is independent of the courts and trained to deal with the reactions and responses of the client facing what can be a traumatic session. We have had small numbers of perpetrators who will not acknowledge or address their behaviour. The large majority do find that our assessment and on going referral / support gives them the lever they need to change their behaviour because in acknowledging this behaviour to a third party, they are held to account for it.

We find that in talking to perpetrators about their opportunities to be a better parent and to remain involved with their children is enough incentive for many of them to change their behaviour.

We believe that this assessment cannot be done by anyone currently involved in the court process. Trained specialists are required for this work. These specialists could also devise models of good practice about how the court process should proceed in these cases.

**RECOMMENDATION**

Relate are not in a position to offer a model that has already been tested within the UK, but we would welcome the opportunity to discuss to develop a model using the experience of other countries together with Respect, Women’s Aid, CAFCASS and the Home Office.

We would be happy to lead on this initiative if the Government wish to proceed.

March 2005
Supplementary memorandum by Relate: Voluntary Sector Funding

INTRODUCTION
During the oral evidence session of the Joint Committee on the Draft Children (Contact) and Adoption Bill on 24 February 2005, Baroness Howarth of Breckland suggested that the Voluntary Sector witnesses present might wish to give written evidence about funding arrangements for the sector to deliver the proposals contained within the draft Bill.

This is the response on this issue from Relate.

BACKGROUND INFORMATION
Relate is a federation of 82 independent local charities usually called Relate Centres.
Relate Central Office is funded by the Department for Education and Skills through the Marriage and Relationship Support Grant programme (MARS) to carry out functions that will enable the local centres to deliver services to the public as well as ensuring the development and delivery of services across the UK. In short, Relate Central Office provides the training of practitioners (counsellors and educators) and the standards for the delivery of services. We also provide the core infrastructure for Relate to develop its practice and services to the public through the analysis and application of research and contemporary thinking.
Relate Centres are reliant on local funding, income from nationally agreed contracts, fundraising initiatives and client contributions to remain open.
Many Relate Centres find funding regularly withdrawn by Local Authorities to make way for other local priorities. Every year, at least one Relate Centre finds itself in significant financial difficulty and sustaining a consistent network of service delivery is a continual challenge.

THE WORK WE DO
The importance and potential impact of relationship support work can scarcely be overstated. The disputes between parents that arrive for resolution at the Family Courts are all affected by poor relationship skills attitudes and behaviours. Working with people to improve these skills attitudes and behaviours is a well-established discipline founded on a long history of research and experience. Relate is the principal organisation with this expertise although there are other very much smaller providers.
Relate has found that the complexity and risk profile of our work grows year on year. Twenty years ago, our work centred around married men and women who were having difficulties in the marriage, and needed support to work out their problems. Today, our work centres on couples and families whose lives are chaotic, and the issues they bring to Relate regularly feature domestic violence, child abuse, drug and alcohol misuse, step family arrangements and a plethora of other issues that create conflict in their lives. In a significant number of cases there is risk to life. Relate had developed its practice in the light of this experience to meet the needs of these clients. As a result many of our practitioners are now highly qualified paid staff.

FUNDING ISSUES
— The cost of providing an hour of Relate work is approximately £50 (including all overheads). The client contribution is on average £30. Many clients cannot provide a contribution of this nature, and as a result the shortfall grows and Relate centres struggle to operate. As one of our centres put it, it is not Relate that needs the subsidy it is the client.

The Government ask the Marriage and Relationship Support agencies each year in our grant application process to ensure that we are an inclusive service for anyone who wishes to seek our help. That is our aim but we cannot find the resources independently through voluntary giving to meet the need.

We need the Government to provide a direct subsidy to enable local centres to serve those clients cannot provide a contribution because of their financial circumstances. We would suggest that a means tested approach to subsidy could be available to these clients.

Without this arrangement many of those people who cannot offer any contribution to our services feel unable to attend. As and as a result often get no help and find themselves in entrenched positions in the legal system within a broken relationship and at the door of the Family Court.
It is a paradox that the public funds are available to support the legal process of separation and divorce, but not the relationship support that might avert the need for legal process. Given that relationship support is cheaper, we feel that this is a cost-saving opportunity for Government that should be taken up.

— The Government produced a strategy for Marriage and Relationship Support (Moving Forward Together, 2002) in which they stated that the wished to see more preventative relationship support work offered to people in an effort to support couples and families earlier in their lives. No core funding has been provided to enable the development or delivery of this work.

Relate has, however, built up a series of adult education and training opportunities for both the public and the professional working with the public to offer skills and awareness training about couple and family relationships, following the lead taken and positive outcomes analysis in both the United States and Australia (eg Blaisure and Gleaser, 2000). There is no public funding for this work in the UK. The Learning and Skills Council have agreed that this work is useful and important but they are not able to contribute any funding to support the development or delivery of these services.

The Government must support the delivery of these services if they wish this type of preventative work to be offered to the public, regardless of their ability to pay. We believe that a policy change is required so that the Learning and Skills Council are tasked to include relationship skills as part of the brief for family learning which currently only extends to numeracy and literacy skills.

The opportunity exists for Relate to form a national agency to design and deliver this learning programme and the LSC have the opportunity to allow us to draw down funding to do this but their criteria for this are too narrowly drawn for most of the voluntary sector including ourselves to do this. We recommend that these criteria are widened to allow this education to take place.

— There is a general agreement within research world wide that relationship education in schools can be of benefit in supporting children to manage their personal relationships as they mature to adulthood. This education can also provide a resilience in dealing with some of the life events that might occur (such as family breakdown, bereavement etc).

The Government have therefore included relationship education as part of the guidance about key stages in the curriculum for schoolchildren.

Whilst this remains guidance, schools are under no obligation to offer this education. Relate believe that the Government should provide the funding to make this compulsory in schools.

We know that where Relate offers relationship education in schools that fund us to run both workshops and one to one counselling, the pupil educational outcomes have dramatically improved, and children tell us they feel more able to deal with their relationship problems and know when to seek help.

CONCLUSION

Relate knows that, although we are a voluntary sector organisation, our work is not available to the public through the statutory sector. It is vital then that we grow and develop to meet the needs of the public in this way.

Relationship breakdown currently costs the Government anything from £5 Billion (Government figures in Moving Forward Together) to £24 billion (recent figures quoted by Treasury officials, 2004).

The grant allocated to the Marriage and Relationship Support Agencies through the DfES is £5 million. Whilst this has increased dramatically since 1997, the funds to Relate have remained the same (without even an increase in inflation). Relate delivers 90 per cent of the work carried out by organisations benefiting from this fund and we receive just over 50 per cent of the available funds. The result is a stretched organisation, which, in real terms, has lost funding to the tune of approximately £150,000 over the last three years.

In October 2004, we put forward our application for funding to the new Strengthening Families Grant Programme which has replaced MARS. The financial year begins in April 2005. We still have no formal decision about what our financial allocation will be for 2005–06.

March 2005

Supplementary memorandum by the UK College of Family Mediators

1. The UK College of Family Mediators was pleased to appear before the Joint Committee on the Draft Children (Contact) and Adoption Bill. It had already submitted written evidence; this supplement is submitted in response to the Committee Chair’s request for any supplementary or subsequent views.
2. The College’s overall concern in this context is that much more flexible and simple access to mediation should be made available—not just before separation, but also during and after the process of divorce and separation. The simple reality is that people experience family transition in different ways and their need for support or resolution will come at different times.

3. The government document *Parental Separation: Children’s needs and Parents’ Responsibilities: Next Steps* (paragraph 48) states that it proposes to review rules and Practice Directions so that the strongest possible encouragement is given to both parties to agree to mediation or other forms of dispute resolution. Taking account of this statement the College repeats its proposal that the definition of “contact activity” (Draft Bill 11E (1) (b) & 11E (3) (b)) should be extended to include: “attendance at an initial family mediation assessment meeting.” The intention would be that both parties should be directed to attend; the purpose of this meeting would be to explain the possible advantages for both parties of mediation and to provide an opportunity for each party to agree to participate in mediation. This initial assessment meeting would clearly come within the definition in 11E (3) (b).

4. In recent government documents, in the responses to those documents, and in discussion of this draft Bill there has been reference to mediation and to in-court conciliation. There is a place for both mediation and in-court conciliation but the differences between the two must be made clear. Mediation is both confidential and legally privileged and takes place outside the court setting. In-court conciliation is not legally privileged. The real value of mediation will be lost if these distinctions are not made clear and if unreal expectations are loaded onto in-court conciliation provision.

5. If additional obligations are placed on CAFCASS officers there must be sufficient funding available to support these additional obligations.

*February 2005*
Memorandum by Families Need Fathers

Families Need Fathers is the only nationwide support service for parents living apart from their children. It is the largest charity, in membership terms, in the family field. It is primarily a social welfare organisation, helping parents struggling to obtain, and then to make best use of, adequate parenting time for their children. Some 100,000 people may be helped each year. The need for this service has yet to be properly recognised by state or charity finance. It is a child-welfare organisation specialising in the rights of children to have both their parents fully involved in their lives. FNF promotes gender equality and respects diversity. Our secondary objective is to do the sort of educational and lobbying work that charities have traditionally done.

(1) The background to all measures dealing with family matters is the crisis of parenting in Britain. The problem is the quantity of time children spend with either of their parents. Almost every social problem, including binge drinking and anti-social behaviour, could be eased with more parental time devoted to children and young people. This has been in free fall as a result of more mothers going out to work. This has been only partially compensated by fathers spending more time with their children. It would be wrong and unrealistic to expect mothers to “go back into the home”. The shortfall needs to be made up by fathers. Most of them would be only too glad to oblige. The problem is worst in lone parent households. Public policy needs to promote paternal involvement in childcare in divided families.

(2) The policy measures that could help with this are legion. Most are outside the scope of this Bill. But the procedures outlined in this Bill are crucial. All arrangements made between separated parents are made in the shadow of what happens if the parents fail to agree and go to law. If the law makes bad decisions, and/or will not enforce them, the message will cascade down to all separating families. The most effective way in which the state can improve the parenting arrangements for all children affected by parental separation is to change what happens should parents go to court.

(3) At present the signals given out to parents—and children—are clear. The children can expect to be in the possession of just one of their parents. Normally this is their mother, but if their father should get “possession” the results for the children can be much the same. The excluded parent can either accept this, or expect many barriers to be put in his or her way if they want anything different. A contact order may be for much less parenting time than the child wants or is used to, and it may prove unenforceable. Given the uncertainty of a positive outcome even in the “strongest cases” many parents do not even attempt to get what they know is best for their children.

(4) This Bill attempts to address one part of the jigsaw that needs assembling if the welfare of children of separated parents is to be improved: the non-enforcement of court orders for contact. Without effective enforcement, should it be necessary, the whole procedure for getting orders becomes futile. Parents are becoming aware that commonly no sanction will be applied should a court order be defied. There is therefore little point in applying for a contact—or other—order. Parenting time is in the gift of the parent who has effective control. If the parents can agree, well and good. But many cannot.

We welcome the idea that more and more varied enforcement measures should be available to the courts. They may then be used—the problem of the existing sanctions is the refusal of judges to use them. Community service was one of our ideas. The withdrawal of driving licences was also discussed. Why was it not actioned? No sanction has to fit every case—provided they might be best in some, they deserve to be on the list of options.
We are unconvinced, however, of how well this Bill will achieve its objective.

It is not forceful enough.

There should be no scope for any doubt that if the Law has ruled that a certain amount of parenting time should be given to the children, that that must take place. Crystal clarity, no hedging about. The measures taken to ensure compliance with the order should of course be the minimum, and the least punitive, necessary to do the job. But there should no scope for doubt that the children will get what the courts have ruled is
required for their welfare, and get it quickly and simply. Such a law would be self-enforcing. This is best for the children, best for the parents, and best for the Law, including avoiding the costs of more litigation. The Bill as drafted is full of caveats and loopholes. This will make it a field day for lawyers and prevent children getting the parenting time that has been ruled they need.

There is no need for any sympathy for, or concessions to, the parent in breach of an order. They have to deliberately and persistently ignore the needs of their child, and the Law, before enforcement becomes an issue. Sanctions can be prevented at any time by their starting to respect the needs of their children and the Law.

(5) There are three strategic considerations in enforcement:

— they should be simple, effective and quick;
— they should not disempower or disadvantage the excluded parent (who is nearly always the weaker one); and
— that they should be applied by the court or another official agency and not by the excluded parent on behalf of the child.

(5i) Simplicity, effectiveness and speed. In order to stop contact to which they are opposed, residential parents only have to delay and obstruct. In effect to withdraw into their castle and pull up the drawbridge. Many have another strategic advantage—legal representation paid for by legal aid. Lawyers then have an incentive to explore issues more exhaustively than the substance merits. In part this is because they get fees for so doing. They can also offer their client the prospect of winning, not by the strength of their argument about the welfare of the children, but by exhausting the capacity—financial, practical and emotional—of the excluded parent to continue. The Bill should offer no possibility of these moves working. Excluded parents typically have too much money to get legal aid but not enough to afford legal fees.

Speed is essential. In disputed contact cases delay means a child loses a parent in the interim. It also enables the residential parent to do three things:

(1) to establish a new status quo which they then ask to have respected;
(2) argue, and this is particularly important for infants, that the bond with their other parent has been broken;
(3) it gives the opportunity to alienate the child from the parent, such that they do not, or appear not to, want a resumed relationship with the excluded parent. At times the child is poisoned against the other parent; at times the child simply comes to identify with the point of view of their residential parent. The counter is for the child to have sufficient time with their second parent to be able to form their own view. If contact can be delayed long enough, it can be too late.

*This is shorthand—the same would apply to other Children Act orders.

(5ii) Not disempowering the excluded parent. The residential parent has the power of possession. It is easier to delay and obstruct processes that it is to initiate and advance them. The residential parent may also have the financial upper hand, if legally aided. Any possibilities of adding any delay or complication adds formidably to the weapons at their disposal.

(5iii) The excluded parent is regularly accused both publicly—but often more importantly to the children—of being the one who is responsible for seeking to impose whatever sanction is being proposed for defiance of an order. “Your dad is trying to put your Mum in prison” etc. In fact, the excluded parent is only trying to get the parenting time that is in the child’s interest. However, part of the answer to the way the issue is misrepresented is for the actions taken to enforce contact to be taken by a public authority, and not by the excluded parent. He or she should merely have to make a complaint of non-compliance. If that is found to have taken place, the courts on their own initiative or another agency, perhaps CAFCASS, should take the matter further. So it is not the father (for example) that seems to be threatening sanctions, but the Court or CAFCASS.

(6) We now come to detailed comments on the Bill.

Reference to the welfare of the children being a consideration in this Bill should be deleted in all the places they occur. This may seem paradoxical, especially for a child-centred agency to propose this, but the reasons are compelling.

The matter of the welfare of the children has already been settled—in the proceedings concerning the making of the contact (or other) order. If there are still any problems about that, they should be taken up by way of seeking a variation in the original order. The same would apply if there are any doubts about safety. The only
issue before the court over enforcement is to ensure that the decision made for the welfare of the children is applied. The rather refined and obscure arguments about the differences between taking child welfare into account over enforcement without reviewing what has been decided elsewhere about parenting will be impossible to make. What will happen is that publicly funded lawyers will reopen every imaginable issue.

The provision about the welfare of the children should be replaced with a requirement to apply the minimum sanction necessary to ensure compliance with the order. But there should be certainty that the order must be implemented.

(7) We are not sufficiently legally informed to know, but it should be made clear that the various measures are not mutually exclusive. There should be a ladder of enforcement measures. If, for example, a parent attended a “contact activity” but still did not apply the order, there should be a natural and inevitable progression up the ladder of sanctions. As opposed to starting again at the beginning. Similarly if a community service order did not do the trick, other measures would come into play. We take it on trust, but would like it confirmed, that the measures proposed here are additional to, and do not replace, existing sanctions. The right to imprison we presume still remains? If that were not the case the word the will soon get around that all a parent had to do was to refuse to attend a contact activity, not show for community service and go out while on curfew . . . and we would be back where we are now.

(8) While we welcome the provision for financial compensation, it is tame in detail. Compensation should be for the amount lost, no more and no less. If one parent had incurred loss through the deliberate and unlawful action of the other, why should they have to pay even part of the cost? Nor should there be any provision for the money to be scaled down according to the means of the person in breach. The practical effect of this will be that residential parents of limited means—in practice often the high proportion on state benefits—will realise, and be advised, that they are unlikely to have to repay any costs they impose on the non-resident parent. The issue of hardship can be raised in the proceedings for recovery of debts. There is no need to add this complication in this Bill.

(9) There is one area of compensation that is, however, much more important than those raised here. It is compensating the children, by way of more contact time with the excluded parent, for the contact time they have lost in the course of all these disputes. The example of holidays illustrates this. The most important loss is not the cost of the holiday, but the holiday with a loved and loving parent itself. The compensation should be another holiday—the time together, as well as the cost of whatever they would have done.

The most glaring exclusion in this Bill is the lack of provision for giving children the parenting time that they have lost. There should be another section laying on parents, who have denied their children time with their ex’s, the obligation to give the children back the time that they should have had. Doing this will remove one of the “gains” that hostile parents get from contact denial—the damage that might have been done to the relationship of the children with their ex during the dispute.

(10) The provision for CAFCASS to monitor contact and report back to the court is in our view a very important one. We are pleased to see it here. It redresses some of the imbalance of power talked about above. It needs to be taken seriously. It will add greatly to the powers of CAFCASS and the Welsh officers to fulfil their mandate, which is to achieve the best for children. FNF’s recommendation for CAFCASS is that it should be more proactive than it can be at present to achieve the best for the children it is, as it were, “responsible” for. At present its role is principally to report to the courts. In private law it can do little else even if the courts so wish. Family assistance orders were very helpful but underused and erratically used. They had insufficient teeth. This provision goes some way to tackling this problem. Public money will be saved if “therapeutic” intervention can replace or reduce litigation. This will be the effect of this provision. The burden on CAFCASS will however increase, and this needs to be recognised in its finance and in its provision for training.

Our long term strategy for CAFCASS is that it should seek to reduce the proportion of its work that is reporting to the court, and build up its responsibility for achieving the best parenting for children. It should work with the parents to agree on child-centred parenting plans. Its activity will need to increase substantially, and so will its training needs. There is a source of funds for this—legal aid. Much of this at present is spent counter-productively—facilitating and even encouraging the parents to fight one another. Public funding, exceptional situations apart, should only be available for parents to seek non-adversarial solutions to their failures to agree.

(11) We recognise the legal problems in achieving this quickly, but we find the term “contact” offensive. This is the current legal term and we ourselves use it for that reason—as in this note. However, it implies a very
brief and slight relationship between the parent and child concerned. The term we wish to see used is “parenting time”. This implies that the amount needs to be substantial, and that what is involved is to enable both parents to have a role in the upbringing of their children.

John Baker  
Chair  
23 February 2005

Further memorandum by Families Need Fathers

The following comments reflect the broader environment within which the Draft Children (Contact) and Adoption Bill proposals sit, mindful that without taking account of this context, tinkering with detail will be relatively less effective, and ultimately cost more, especially if yet more children lose their families for no good reason.

My current role within FNF is to develop a new support service for its membership, and others seeking its help. This work is funded by a Government grant. The service focuses on meeting the personal and parenting needs of those attempting to remain good parents during and after the break-up of their families, ie not parents “absent” by choice, or presenting risks to children, but those frustrated or prevented from continuing to be part of their children’s lives by current societal expectations during and post divorce.

After an analysis of the support needs of this group, we are building a series of parenting support workshops, focusing on key issues that affect parents apart. On February 5 with DfES guests, we ran a day of workshops designed to feed into the DfES draft parenting plans documents “Putting Children First”. This work is therefore already enabling those at the sharp end of family policy and practices to contribute their first-hand experience of what’s workable, what’s not, and why. Failing to take account of these “service users” will inevitably mean less successful outcomes. We are so tired of all the “experts” telling us what we need.

I work with a group of fathers who want to take parental responsibility for their children. It seems irreconcilable to me that they should have to bargain for the recognition of a fundamental human relationship, but that is the reality for them. And it isn’t just those who apply for court orders. Many fathers simply give up the unequal struggle to continue to parent, too stressed and distressed to go on, and so aware that all impacts upon their children. Universally, they report encountering barriers to parenting, from the initial shock that they are expected to be on the outside of their children’s lives, a “non-resident” parent (if they’re lucky), to the ongoing frustration of having to ask the other parent to allow every moment of time with their children.

These are the parents at the sharp end of family policy and practice. The workshops so far reveal a deep and unwavering love for their children, an acute sensitivity to them, and the impact of separation upon them, a “non-resident” parent (if they’re lucky), to the ongoing frustration of having to ask the other parent to allow every moment of time with their children.

It has been a privilege to be part of this work, and I find it difficult to reconcile the huge strengths these men have, the contribution they should be making as a right, to their children’s lives, with the fact that each and every one of them is facing an uphill struggle to do so. Children deserve more.

These fathers don’t need to be judged, or trained to be “good” parents. They just need to be allowed and enabled to “be there”1 for their children. They know what the barriers are, what needs to change in order that children get a better parenting deal. The collective wisdom of this 30-year old charity must be recognised, and respect must be shown when we try to raise awareness of the issues that affect FNF members plus the many thousands of others who contact us each year, who have direct experience of what causes problems, what needs to change. Please, listen to us: we really have been there, seen the inconsistent reality of the family courts, and have got the T-shirts! We are not impressed.

Without question, the main message that emerges from every workshop, as it has done throughout FNF’s 30 years, is the power imbalance between separating and separated parents. This sets the tone for the child’s continuing relationship with its family, and its ability to access available support. Restore the balance between parents, and the rest falls into place, reducing costly court battles, enabling parents to focus on their primary task, to work out how best to share their time with their children.

Denying children and parents a meaningful relationship with their family is the root cause of conflict, not the result of conflict. Government policy, family legislation like that proposed in the Draft Children (Contact) and Adoption must send the right message to all, especially children. Those giving evidence in the first session on

---

1 This is exactly what children are saying they want (BBC on-line research: Children of our time). They just want their parents to “be there” for them.
24 February were asked if there should be something included that flagged up the importance of sustaining the relationship between the child and the “non-resident” parent. The reply:

‘... there was “certainly no harm in spelling it out, right at the front of the Children Act”.

We would go further, arguing that the use of terms such as “non-resident” may actually continue the differentiation between parents, which is artificial, and should not exist, only exists because we currently use such labels to define parental status post separation. We wholeheartedly agree that an appropriate weighty message needs to be there, especially for children, but a more “residence” status neutral message as follows:

Children need to be sent a clear message that their relationship with both parents (and wider family) is respected and protected: right to family is for life, not just when parents live together.

This obviously applies equally when one parent refuses to accept responsibility for his or her child/ren (as many lone parents report). A range of sanctions to enforce this key child-centred message are crucial, whichever parent, mother or father, fails to put children’s interests before their own. And it goes without saying that when there is evidence of risk to a child, this takes first priority, needs clear procedures in place, that any allegations are tested as swiftly as possible to ensure children are safe, and that their relationship with a parent is not disrupted unnecessarily.

Currently, entirely the wrong message is sent to children, aware that when one parent decides and is determined to deny them this fundamental right, their other parent is powerless to help them. Even more damaging in terms of social outcomes, is the message sent to children that even the law supposed to protect them can be broken, time and costly time again. Children of either gender, witness to such omnipotent power will listen and learn, their future behaviour shaped, their respect for the law reduced, their rights and responsibilities to half their family derogate. We know this through our membership feedback, and the many thousands of calls to our Helpline and we are fearful of the consequences to yet more families, yet more lost children.

The suggested range of options is progress in terms of recognising at long last, that there is a problem to be addressed. That is at least a start. We all seek better outcomes for families, especially children. More support, improved mental and physical heath, greater achievements, and above all, less conflict, safety and security for children, an environment where all can move on with life positively.

Without recognising the root cause of conflict and identifying the key issues that need to be addressed, sanctions as a last resort will be just another time-wasting exercise, adding to the delay children currently face waiting for society to reinforce their continuing right to family.

Sending parents on parenting classes, giving them community service orders will be a complete waste of time, if the children remain firmly in that parent’s grasp. Even if it is compulsory to attend, the outcome will be questionable, especially if there is no follow-up to monitor change (note: change, not simply compliance with say, a curfew order).

We have to seize this opportunity to change the culture in our society. Other countries around the world have already moved to a more child-centred approach to family separation. Enshrined within their policy and practices is the fundamental message that children need both parents. This isn’t something that gets settled way down the line after protracted legal battles. It’s right up front, in the message to all, part of what society expects for children. Parents must face up to their responsibility to achieve this as best they can. Or else. Research in for example, the US has proven that by giving parents no option but to work out a shared plan for children, conflict is greatly reduced. Neither parent is in the driver’s seat. Only a very few really difficult cases ever get into the formal court system. All the work with families is done right from the beginning of break-up. Families are expected to attend information classes explaining what their responsibilities to their children are. Compliance is not an option. They comply.

Sanctions here, after parents have received the wrong message re what they should expect from separation, ie one gets the greater share of everything, because they’ve assumed that could keep the children, simply will not make much difference. The harm to children, the limitations to the family support they have a right to, has already been done, damaging the relationship with one parent for years to come, possibly irreversible damage.

It has to stop. Our children deserve better futures. It is about time we put them first, rather than allowing their parents the opportunity to opt out of sharing their care.

There are reservations that the amended C1 and C1A form will achieve this, but this will be become clearer after its introduction.
GET THE FOUNDATION STONES IN PLACE

The need for a cultural change

“The proposals related to contact in this draft Bill are for this group of parents (the 10 per cent who turn to the courts)” (quote from the Ministerial Foreword).

— A cultural change is vital, not just for this group of parents but also for all parents. There is no evidence that children in other “broken” families are not settling for less of a relationship with half their family than they should expect.

— A fair, shared parenting outcome should be an expectation for all children. Based on children’s independent right to family (ie not dependent upon whether either parent decides to uphold this).

— An interactive and accessible support service is needed to monitor change, ie not just compliance with an order eg to attend parenting classes:
  Working with families, throughout separation.
  Trained to work from a shared parenting base.
  Service not time-limited (ie not just 12 months as in the draft Bill), but available to all family members (and others concerned for the welfare of a child) when problems arise.
  Charged with promoting and achieving the change necessary for children, putting children (rather than either parent) first.

— Range of sanctions if parents attempt to take ownership of children, or abrogate responsibility for them. Parents must be made aware of these right from the outset, reinforcing the importance for children of shared care.

Send a clear message to all

The need for a cultural change is vital, not just for this group of parents but also for all parents. There is no evidence that children in other “broken” families are not settling for less of a relationship with half their family than they should expect.

The message sent to families must come from society, not simply from either parent.

The Government does not yet appear to have fully grasped the nettle of resented “contact”, what currently allows that to happen. Unless it does, children will continue to lose out on vital, family support.

The message should be very clear and inescapable: respecting and protecting children’s rights to both their parents applies to all, from the very beginning, even before children are born. The expectation that they deserve more than they currently are “allowed” given current “winner takes all” climate, should be crystal clear to all, not just aimed at those we know are currently refusing to allow more than a mere crumb of “contact”, or worse, excluding the other parent completely from the lives of their children.

Child-focused support before legal action

People “turn to the courts” because currently there is no alternative.

There must be. We have argued long and hard that the present court system is wholly inadequate and inappropriate to help parents through family breakdown. They don’t need judgment; they need help to plan properly for their futures. They need timely child-focused information, and advice. But all needs to be built on the right foundation: children need access to the widest possible family support network, especially during and after the breakdown of their family. Parents must be left in no doubt that that is what they must aim to provide, what society, especially children, expects from them right from the beginning. Or else.

A collective responsibility

The formal legal framework, and all who work within it, plus others working with families must sing from the same song sheet. Children do best when their parents are involved in their lives. It isn’t about “proving” they can benefit from contact. Only in the worst-case scenarios, where there is evidence of extreme risk to children, by either parent, should “benefit” from a family relationship be an issue. This affects a tiny minority of children. Let’s get this in proportion and give children the fundamental right to be part of their families, whether their parents live together or not!
Sanctions from the very beginning

Sanctions, such as those suggested in the draft Bill have their place, are essential to ensure all understand the gravity of denying children these basic rights. No-one should be left in any doubt that corrective action, even punishment will be used, from the outset of non-cooperation. We have to be seen to disapprove of such behaviour.

Currently, society regards non-payment of a TV licence as a more serious offence. We seem to have dual standards: one for private family law issues, and one for the rest of life. For example, when sanctions were applied to parents with children absenting from school, the argument that the children would suffer if their mother was sent to prison did not apply. Families rallied round, children were cared for in the interim. Yet when the ultimate penalty for non-compliance with a “contact” order is suggested, hands go up in horror. So we punish for depriving a child or its education, but have seconds thoughts if it risks losing half its family support. The irony of this is, that sentencing mothers for an abrogation of their duty to their children, actually sent that oh so necessary message to the truanting children, that:

— Society disapproved of their parents’ behaviour.
— Education was considered vital for their futures.

Newspapers were filled with reports of mothers saying they had mended their ways, would do more to encourage their children to go to school... and children who had been motivated to make more of their educational opportunities.

The parallel with parents who deny children an opportunity to benefit from the love and care of half their family seems obvious. The first step to change is to say loud and clear that we disapprove, and intend to punish as necessary, for the sake of the children.

Sue Secker
1 March 2005

Memorandum by the Grandparents’ Association

Introduction

Family life in the UK is rich in variety and complex in its relationships. Grandparents, aunts, uncles, step-grandparents, god-parents and family friends may all contribute to the rich tapestry of family life which nurtures and protects a child. For example, three quarters of the UK population is part of a family of three or more generations, providing children with a strong sense of their culture and heritage. Grandparents often provide an important safety net for parents: 82 per cent of children receive some care from their grandparents; nearly 5 million grandparents each spend the equivalent of three days a week caring for their grandchildren; and 1 per cent have grandchildren living with them. Importantly, many of these grandparents and other family and friends are also in paid work and/or are caring for other family members, as well as having other interests and pursuits.

The Grandparents’ Association

The Grandparents’ Association has its origins in a small group of grandparents who had lost contact with their grandchildren. Some 18 years ago this group decided to see what steps they could take to re-establish contact, and in some cases care for their grandchildren on a full time basis. From this the Grandparents’ Federation—now the Grandparents’ Association—was created. It is now a registered charity. The object of the charity is to enable grandchildren to have the benefit of being part of an extended family, something that often helps children to develop into well-balanced adults. It does this by working to assist and support grandparents who, because of the breakdown or separation of the family, have either lost contact with or are caring full time for their grandchildren, the organization is currently the only national registered charity dedicated to issues affecting grandparents in these situations. It is also used as a source of advice and information for professionals, the public and the media.

The Association’s headquarters are in Harlow, Essex. From there a helpline is operated to advise grandparents who want to re-establish relations with their grandchildren. Currently we operate five days a week, and in the evenings volunteers man the line. The advice line receives about 125 calls per month, of which about 60 per cent raise contact issues. The advice line was recently awarded the Legal Services Commission Quality Mark. We also have 14 support groups for grandparents around the country and we are working to establish more.
Contact is lost for a variety of reasons, such as family feuds, divorce of the parents, death of a parent, a child taken into local authority care, adoption. An estimated 1 million grandchildren are denied contact with their grandparents as a result of such family events.

**Grandparents and Contact**

When a grandparent is facing difficulties in contact with a grandchild it is always a firm recommendation of the Association that recourse to the courts should be a last resort, and that all other means of resolving the problem should be tried first. To facilitate this we have just employed a part time mediation officer (from 1 March 2005) who is establishing a scheme for distance mediation to assist grandparents to obtain contact with grandchildren. When a grandparent is denied contact as a result of a breakdown in relationship with a child/parent, or more commonly with a daughter or son-in-law (ie the partner of a child/parent), re-establishing communication is often a first essential step. Nevertheless, some relationships prove to be intractably hostile and the only way forward is by seeking a court order.

**Contact Orders**

By virtue of section 10 of the Children Act 1989, unless the child has lived with a grandparent for a period of at least three years (S10(5)(b)), the grandparent must first obtain the leave of the court before an application for contact can be made. Leave is usually given, but the requirement for leave imposes additional burden on a grandparent by way of stress, expense and delay. Delay also adversely affects the child, because if the court decides that it is in the child’s interest to have contact with the grandparent the child will have been deprived of that contact for longer than desirable by virtue of the leave application. Even before the question of enforcement of an order arises, grandparents face additional expense and delay in obtaining one. The Grandparents’ Association is campaigning actively for the leave requirement to be removed, and this could be effected by a change to the Family Proceedings Rules 1991.

Even when a grandparent has an order for contact it may not be complied with. The current means of enforcement by a penal notice, followed by imprisonment or fine for contempt are even more inappropriate for use by a grandparent than they are in a parent to parent dispute. The effect on the child of having mother punished by grandmother (for that is how it will appear to the child) is hardly conducive to the relationship between the child and the grandparent.

**The Children (Contact) and Adoption Bill proposals**

The alternatives offered by the Children (Contact) and Adoption Bill are therefore welcomed by the Grandparents’ Association. The power to direct parties to attend information meetings, parenting programmes and other activities is an important proposal which is warmly supported by the Association. In appropriate circumstance it is the Association’s view that other activities could include family group conferencing. While family group conferences are being used extensively by some local authorities in relation to children subject to care proceedings, it is not used yet in private law proceedings (ie between individuals), and we consider that there is a place for this technique in resolving some disputes in the best interests of the child. It follows that the Association also supports the power to attach conditions to contact orders requiring attendance at a programme or class.

The less draconian sanctions of community service orders and curfews would be an improvement on the present sanctions available to a court to enforce its orders. Nevertheless, the Association does not believe that a grandparent wishing to maintain contact with a grandchild would generally want to invoke even these means of enforcement. The very large majority of our members and other grandparents who contact the Association want to regain contact on as amicable a basis as possible with the parent. The imposition of a sanction is not conducive to improving the continuing relationship that the grandparent must try to maintain with the parent in the interest of the child. As Churchill said: “To jaw-jaw is better than to war-war”, and most grandparents recognize this—as does the Association. Many grandparents find that, with patience and persistence, the precious link with a grandchild can be restored best by a dialogue with the parent.

**Some Comments on the Consultation Document and Clauses of the Bill**

*Ministerial Foreword*

It is of particular note that the foreword only mentions “parents”. This overlooks the importance of grandparents to the lives of children and that they, and indeed other kin may be involved in disputes over contact. It is an unfortunate reflection on local and national policy in this regard that the interests of the wider family are so frequently overlooked. Ministers and policy makers should be more mindful of those interests,
and that they are now protected by the Human Rights Act 1998 and Article 8 of the European Convention on Human Rights, and that to ignore them in respect of individuals may be discriminatory, contrary to Article 14 of the Convention.

**Regulatory Impact Assessment**

While the Association recognises that the Bill is proposed in the context of parental separation, it is concerned that nothing in the Regulatory Impact Assessment makes any acknowledgment of the position of grandparents or other kin. Loss of contact with a grandchild most frequently occurs when parents separate, although by no means exclusively in such circumstances. The lack of a reference to persons other than parents leads to the conclusion that Ministers and their advisers have ignored the position of members of the wider family, and this is a problem that needs to be addressed. The Bill is generally neutral in this respect, and accordingly, subject to the points made below, the association is able to support the draft Bill. However, it is essential that in implementing the Bill full account is taken of the legitimate interests of members of the wider family.

**Comments on Clauses**

In Clause 1: new section 11A(3)(a), 11B (3)(a), 11F (3)(a), 11G(3)(a) and 11I(2)(a) all exclude the exercise by the court of its additional powers when a child is, or was “being looked after by a local authority”. These exclusions do not take account of the situation where a child who is accommodated by, but is not in care of, the local authority, is placed with a relative who will not co-operate by allowing the child to have contact with a grandparent who has a contact order for the child. There is no effective sanction that the local authority can apply, since the child is not in care but the placement is considered to be the best available for the child. Indeed it may be the only suitable placement available. If it is thought to be necessary to impose this exclusion in respect of a parent to parent dispute (which it may be), it is inappropriate when another family member has a contact order in his or her favour.

3. Clause 5(3) (Transitional Provisions) leaves it unclear whether a breach which starts before the commencement of Sections 11G and 11I and continues after the commencement of those clauses, is caught by those provisions. In other words, is each “failure” (eg successive breaches of an order to allow contact on alternate weekends) to count, or only the first when the breaches continue without a break?

**Conclusion**

The Grandparents’ Association welcomes the Children (Contact) and Adoption Bill, with minor reservations on the drafting of clauses, but with major concerns about the lack of Ministerial recognition of the importance of the role of grandparents in the lives of children. We are grateful to the Committee for inviting evidence from the Association, and for the opportunity for a representative to appear before them. We hope that our evidence will assist the Committee in their consideration of the Bill, and in improving the support for children who are subject to the trauma of parental separation and family disputes.

*P M Harris*
Chairman

*February 2005*

**Memorandum by Both Parents Forever**

The following are the main points, we would like to draw to the attention of the Joint Committee.

1) The use of Contact Centres.

While there is clearly a time, when contact centres are useful, and play a vital role. To many solicitors acting for the parent usually the mother with residence, suggest contact centres, at the first meeting even when they have not been told of any violence etc. Therefore in our view, the use of contact centres, should only be suggested at court, and only used by those when a court order has been made. By this process, the cases where genuine concerns about the safety of the child, would be raised immediately, and if the grounds are genuine, then the mediation is unlikely to resolve the issues, and the case would come quicker to court.

2) The subject of Domestic Violence against Men, and abuse of Children, physically, mentally, sexually and emotionally by mothers and women. According to Medical Statistics.
1) One in three women and men, who have been victims of Domestic Violence are likely to be violent to their partners.

2) One in three women admit they are violent to their partners.

3) One in three women admit they slap, hit their partners during rows.

4) One in five women admit they bite, scratch, or throw dangerous objects.

5) One in seven women admit they use knives or dangerous objects.

6) One in five casualty admissions after domestic violence are men.

But even these statistics don’t give the true picture, as a man is far less likely to report he is a victim of Domestic Violence. Our estimate is that probably two thirds of men never report domestic violence by their partners, and of the third who do, probably only about two thirds are not believed.

Therefore are estimate of the extent of who are victims of Domestic Violence are about 40 to 45 per cent men and 55 to 60 per cent women, rather than the figures based on Social Services of 80 per cent women.

We would stress that, we sent the above medical statistics to the Rt Hon Harriet Harman, twice in 1997, and having got no answer or acknowledgement, we sent them to Mr Blair, complaining they had not been acknowledged. This letter was also ignored.

At a conference in March 2004 in Lewisham, The RT Hon Harriet Harman continually quoted the social services figures, we pointed out these were wrong and told her, we sent her the statistics on domestic violence against men.

Her response was they would probably be on her in tray. However, she was completely taken by surprise, and the look on her face was anger, when we told her they had been sent to her twice in 1997, and she had not acknowledged them.

After this conference, we sent them to her again, but at a Conference in Southwark, she again came out with totally false figures from Social Services. We again sent the true statistics this has still not be acknowledged.

We have prepared a lengthy paper on this and will bring this with us on 3 March, or post to the Committee, but are enclosing with this three cases we are currently working on, where the man is either a victim of domestic violence and is not believed or the female partner has made allegations and the civil courts have accepted the mother’s facts, without any investigation, eye when the criminal courts and the police have shown the man is the victim or the mother has fabricated the allegation.

One of the cases you will see is from Belgium, but the mother made the allegations to cover up her abduction of the children from the UK. (not printed)

The third point we would like to stress is that more mothers abduct children than fathers do, and this is born out by Rulings in the European Court of Human Rights, and from International Social Services Records, yet men have a much harder job to get the solicitors to act swiftly when mother abducts. Also International Statistics show that the same occurs worldwide.

February 2005

Examination of Witnesses

Witnesses: Mr John Baker, Chairman, and Ms Sue Secker, Families Need Fathers, Mr Peter Harris, Chairman, the Grandparents’ Association, and Mr John Bell, Chairman, Both Parents Forever, examined.

Q176 Chairman: Good morning and welcome to the committee. Can I say also to the people in the Grimond Room who will be watching these proceedings by video that they too are very welcome to these proceedings. The full transcript should be available early next week. Can I begin by asking the witnesses whether you believe that the proposals in the draft Bill will improve the current law?

Mr Baker: One of the issues in getting enforcement of contact orders has been the inappropriateness in the judges’ eyes of the remedies that are available to them, in that there are not ways of getting a contact order or other Children Act order enforced without hurting the children. This has had the effect in many cases of frustrating the purpose of getting a contact order. These ideas are ones that are much more likely to be used and are very welcome to us. I think there perhaps ought to be a longer menu of ideas because the judges, of course, can choose what is most appropriate in a particular case, but these are very welcome proposals.

Q177 Chairman: Are there any other views on whether you think this Bill will improve the situation or not?

Mr Harris: Certainly from the point of view of the Grandparents’ Association we welcome the Bill. We think it will improve matters. There are one or two points which I have made in the written submission
about it, but the proposals will help prevent the problem of individuals who are blinded to the needs of the child by their own emotional priorities, that is the way I would put it, and cannot see beyond the anger and bitterness which the breakdown in the relationship has caused them. Therefore, the proposals about contact activities and education in that form are something which we would welcome and would welcome seeing done at an early stage because the earlier this is commenced, before positions become entrenched, the better. Generally yes, we welcome the Bill.

**Mr Bell:** I agree with everything that colleagues have said. I would like to suggest that when any order or application is made these guidelines are automatically sent to both parents so they know what the law is so that there is less chance of either parent being able to abuse them.

Q178 **Chairman:** So you would like it done at the earliest possible time?

**Mr Bell:** Yes, just to warn them what the judges’ powers are and then there would be less likelihood that extreme orders would have to be made. I know from experience that all too often solicitors are not telling their clients what they are entitled to.

**Mr Baker:** I would like to reinforce that. Directness and simplicity are very important. One of my organisation’s objections to this Bill is that there are too many loopholes and caveats, and I would like to see perhaps on all orders something stated at the bottom that the court expects this to be observed and that there will be sanctions in the event of non-observation of it.

**Ms Secker:** It is very important that that message goes out to both parents at the very earliest opportunity and that should be a message that all agencies working with families in these situations should put forward. It is equally important—in fact, more important—that the children get this message. Children should know that their rights to their family, both their parents and the wider family, are respected and protected. If there is any way that all agencies working with families could do that I think that would be a great step forward.

Q179 **Baroness Gould of Potternewton:** Mr Baker has made some suggestions about possible changes to the Bill, but do you think that there are any very specific proposals that you would like to see written into the Bill which you think would improve it? Is there anything which is dramatically missing from the Bill?

**Mr Baker:** I said in the written evidence that I do not quite know where it belongs in legislative terms, but if children have lost contact or parenting time as a result of a contact dispute they should be given that parenting time back again. We comment on this in relation to compensation for the cost of a holiday. Of course, if the cost of a holiday has been lost as a result of some disruption there should be financial compensation, but the more important compensation is actually the time on holiday. If children have lost parenting time as the result of a dispute there should be a sort of log that says the child is owed this amount of parenting time and needs it to be paid back. This would undermine one of the incentives in these rather sad and bitter disputes when the obstructive parent thinks, “I have managed to damage that relationship with my ex”.

Q180 **Chairman:** Do you think the wider point is parenting time as opposed to contact time?

**Mr Baker:** Yes. This is a far more appropriate term. “Contact” is not a nice word.

Q181 **Baroness Gould of Potternewton:** Do you think that the contact activities that are proposed in the Bill are going to be effective? I particularly direct this to Sue Secker, if I may, because in your paper you say that sending parents on parenting classes will be a complete waste of time. I wonder if you can explain where you stand on this whole question of contact activity?

**Ms Secker:** Without the fundamental message from society, the cultural change, that both parents are equally important to children, they will be a waste of time because there will not be any change in attitude. Once they have had the parenting classes they will go back and do exactly the same thing again. All these measures are a deterrent if they are used early enough with the backing of the whole of society saying, “It is important for you to behave like this for the sake of the children”. When I said they would be a complete waste of time I was trying to put it in context. It needs that background for it to work.

Q182 **Baroness Gould of Potternewton:** Accepting that, would you still maintain that it should be written into the Bill that these are the sorts of contact activities that should take place?

**Ms Secker:** Definitely.

**Mr Baker:** Of course there is a huge range of cases and there are some cases where people simply do not realise the importance to the children of having both their parents involved. For those people who are insufficiently informed, who take a tunnel vision view, these would help, though of course what Sue was doing in her paper was articulating the feeling of some of our grass roots members, which is one of frustration that they are not supported legally or culturally in their wish to see their children having both parents involved.

**Mr Harris:** Can I add two things to this debate? One is that the Grandparents’ Association’s experience is actually more in line with the last comments and not
Chairman: Mr Baker has a point. It is very important that we do not do that, I am your position, is it not?

Mr Bell: Absolutely. I support it and I think it would work.

Chairman: That is the important point. Thank you very much.

Baroness Howarth of Breckland: You are talking about grandparents. What about aunts and uncles and other close relatives? Would you include them in these orders?

Mr Harris: I would if they are involved. The importance is the relationship between the adult and the child and the benefit of that relationship to the child. It is a matter of fact, demonstrated daily, in fact hourly, that grandparents have a particular relationship with a child and they are used very extensively for child care, for example. That is not to say that other members of the family, even older siblings sometimes, as well as uncles and aunts and cousins and so on, and indeed people who are outside the family, are not important to the child. I really would base this upon the relationship between the adult and the child and the importance of that relationship to the child. That is really what this legislation ought to be aiming at.

Mr Baker: There is a lot of good experience here in public law as to who is relevant. One of the things that we would often want to see is what is regarded as good practice in public law being regarded as good practice in private law and I think extended families in broader terms would be one of those categories.

Baroness Hooper: Who decides that then? Who decides that it should be the wider family in any given circumstances? It is a matter of fact, obviously, if children have perhaps been living with aunts and uncles as well as grandparents and as well as their own parents or one of their parents.

Mr Baker: I think the law at the moment, and I am not a lawyer, is a bit restrictive. It is partly those people who have parental responsibility, which can be extended to anyone but is normally only the parents, and in private law it is only the two parents. Of course, the suggestion, which we warmly support, is that that should be extended to grandparents. As to how far you took this, I think that would be enough in the first instance but it could be decided on the facts of the case.

Chairman: Really what you are asking for is on the fairly narrow issue of the grandparents being able to go to the court as adults who have a right, in effect?

Mr Baker: Yes.

Chairman: Whereas that would not necessarily be extended to other relatives. That is your position, is it not?

Ms Secker: One of the things I would like to contribute today is the fact that I work as a family group conference co-ordinator as well as working for Families Need Fathers. It is a sessional job. Having gone through the training and worked as a family co-ordinator, it strikes me that the use of that therapeutic work with families would be so appropriate to use in our kind of private family law cases. Mostly the cases I work with are in public law and they are referrals from social services and other agencies working with families. What happens is that the child is firmly at the centre of the conference, which is the family’s conference, and it draws in anybody that has concern for the child, and they get together. The experts input their concerns for the child at the beginning, but then they withdraw and the family is left to come up with a plan for the child. We did suggest it in the “Making Contact Work” response but it does not appear in the Bill. I personally think it would be an amazing thing to try in private law. The things we achieve in public law where there are real concerns for children and the plans that these families come up with themselves are brilliant and I am sure it would work with our families.

Earl of Dundee: Can I just connect this to what the courts can or cannot do? The evidence from the
judiciary suggests that the role of grandparents is already protected and that a court can join a grandparent who is party to the proceedings. Do you agree with that assessment?

Mr Harris: Of course the court can join the grandparents but it is a matter of discretion for a start. Unfortunately, we see far too frequently that nobody thinks of joining the grandparents. The grandparents, for example, in adoption proceedings, where there may be issues of post-adoption contact, are too often ignored and consequently do not get the opportunity to have their voices heard. They are simply overlooked, which is one of the reasons why we want the removal of the application for leave which would at least remove one hurdle and one expense from grandparents in seeking contact with grandchildren in a wide variety of circumstances, but I also thoroughly endorse the views expressed by Sue Secker about family group conferences which we think certainly have a place in private law proceedings as well. As for the views of the judiciary, with the greatest of respect, what the judges see are the cases before them. They do not know and have no way of knowing about the cases where the grandparents are simply overlooked and not thought about. I would suggest, again with respect, that unless the matter is brought to the judges’ attention in some particular way, perhaps by the CAFCASS report or perhaps by one of the parties, grandparents’ issues do not arise within the contact disputes we are talking about as a matter of course. Therefore, I fear that the protection which the judiciary say they can provide by joining the grandparents is in many cases pretty illusory.

Q189 Earl of Dundee: Do you therefore consider it to be a good thing if the current procedure comes to be amended so that the courts expect to receive from CAFCASS some contribution?

Mr Harris: I would endorse that. One of the distinctions, if I can be slightly technical but it is very clear, between section 1 and the checklist in section 1 of the Children Act and section 1 of the Adoption of Children Act 2002, which is due to come into force, is that the latter does emphasise in its checklist the importance of relationships with relatives and other relevant persons for the child. If one saw that introduced into the Children Act it would help significantly because it would direct the courts’ attention to the fact that the relationships with relatives other than the parents (but of course including the parents) are important to the child and should be therefore considered in the checklist of issues in regard to the child’s welfare.

Q190 Earl of Dundee: What action, so far, that you may be aware of has been taken by your colleagues or anybody at all to do just that, and to seek to have an introduction of it into the Children Act?

Mr Harris: We have not pursued that particular bit of legislation. Our first priority is to remove the requirement for leave. The difference between those two sections I have to say is not something which we have concentrated on recently but certainly it would be part of our priorities. You may be aware that there is an all-party parliamentary group on grandparents and wider kin. It has a meeting next Thursday, to which you would be very welcome indeed, and we will be discussing there some of these issues and that is something which I would certainly want to add to our wish list. The contact issue is one which is high on our priorities list.

Q191 Earl of Dundee: Can I pick you up on one thing? You mentioned the restriction which comes through leave, does it not, at the moment, in that staying with the grandparents is expected to be for three years?

Mr Harris: Anybody in fact with whom the child has lived for three years has a right to make an application for an order without leave.

Q192 Earl of Dundee: How likely is it so far and arising from your endeavours that that restriction is going to be removed?

Mr Harris: There has been no response, or at least no favourable response, from the government on that score as yet. The Conservative Party have said that it is part of their policy. Whether it will be in the manifesto or not I do not know. As for the Liberals and the other parties, we do not know what their stance is, which is probably the reason why we want them to come to the all-party parliamentary group so that we can get some feedback on that.

Q193 Chairman: I want to move on to enforcement but I think you both want to come in on this issue first.

Mr Baker: Yesterday’s report hit it absolutely on the head in terms of barriers to taking action over the issue of grandparents and other issues. When things get to the courts they are probably less discriminatory than are the obstacles that are made in getting there. This is clearly the case with grandparents, that they face additional obstacles, and those need to be removed. Coming back to this Bill, one of the crucial things about it is that there should be minimum barriers to people taking action and having their redress. These two things are highly relevant.

Q194 Chairman: Mr Bell, you are nodding your head.
**Mr Bell:** I would agree with everything that has been said on this but one thing I would add is that we get a lot of grandparents coming to us who are just told by solicitors, “You have got no rights. There is no point in you doing it”. I think, even if they are not given an automatic right, it should be something where they know that they have got a right to apply to be made a party to the proceedings.

**Chairman:** That supports Mr Harris’s point, that there ought to be as few barriers as possible in terms of getting themselves involved in proceedings in some way.

**Vera Baird:** Do you all think that that should be cast wider than grandparents, coming back to the question that was asked before? Ought there to be no aid for any application for leave from a cousin or aunt or uncle, or large numbers of them?

**Q195 Chairman:** You can see the problem in this. In a way there need not be any walls if an awful lot of relatives could be involved, and indeed if the child has a special relationship with another older person why not bring them in? There is a problem about how you would define this in law.

**Mr Baker:** How you tackle this is part of a wider issue and that ought to be the role of CAFCASS, that it should be an advisory and support agency and anyone should be able to go into a CAFCASS office and get advice and support, and hopefully only a very small minority would actually get as far as legal cases. If that were necessary, hopefully there would have been sufficient discussion or whatever with the wider family to say whether they should or need to be involved and whether they need to seek leave or whatever. I have mixed feelings about that. I have no doubt whatsoever that the barriers against grandparents should be removed. I have mixed feelings about how wide the net should be cast, but if it is in terms of there being an advisory and support agency that anyone has access to, then I think the issue will be significantly defused.

**Q196 Chairman:** It would be manageable?

**Mr Baker:** Yes.

**Q197 Baroness Howarth of Breckland:** Clearly what you are saying is good practice with CAFCASS, obviously, or a similar body making an assessment of the child’s needs and who is in its sphere. How do you think we get this translated into the Bill? If you do not want to answer that now it would be very useful if you went away and thought about it because it is clearly good practice but we need to know what this Bill can do to enhance this.

**Ms Secker:** Is it not about this message that I keep on going on about? Children should receive the maximum family support, especially when their parents are parting. It is about maximising that and that whole message coming out. John was talking about CAFCASS. There is a big training issue in CAFCASS.

**Q198 Chairman:** The question is how you would draft it in a Bill. It is one thing to say you want to facilitate this to happen and I think the committee would be sympathetic to looking at ways of allowing it happen. Whether you can put it into the Bill as a legal requirement is a much more difficult issue. As Baroness Howarth has suggested to you, if you think about that and maybe write to us if you have any specific ideas that would be very helpful but the issues you are raising are understood. Putting them into an Act of Parliament as a legal requirement is a rather more difficult issue and might not be necessary in order to achieve the end most people want anyway.

**Mr Baker:** My short answer is that it is not an issue for this specific Bill, which has a very specific and absolutely key focus but it is a very narrow one. It is more a remit of the recasting that is needed about the family justice system.

**Q199 Jonathan Shaw:** All of you will have hundreds of cases that you might point to when contact has not been kept up by the parent with whom the children reside. In your written evidence to us, you say that Families Need Fathers welcome the enforcement proposals, and you point out that community service or non-paid work is an idea that your organisation has promoted. I wonder if you could provide an illustrative example of where some enforcement action, be that curfews, unpaid work or other options, might have made a difference.

**Mr Baker:** The one that immediately comes to mind is about a member of my local branch in Brighton who was given (or we would prefer to say the child was given) a contact order but there was a long delay. It came up to the issue of enforcement and he had no choice but to ask for imprisonment and the judge changed the contact order but he was not willing to see the parent go to prison. In fact, the non-enforcement was fudged. We feel that if in that case the judge had had a battery of options that he was more likely to use, that child would probably be getting the contact now, but in fact in the meantime there has been so little contact and so much alienation that the child is now saying that he does not want to see the father that he had an excellent relationship with some years back.

**Mr Harris:** Our approach to this would be quite clearly that, in line with our general policy of discouraging people from going to law unless they really have to, enforcement is even further down the line and something which is very much a very last resort because you have got to try and maintain relationships here and that is not particularly conducive to that. However, given the wider range of
options, particularly such as community service or curfew orders, those are much more realistic sanctions because at present most parents will be told by their solicitor, “There is the option of sending you to prison but the judge is not likely to enforce it because he will probably not regard it as being conducive to the child’s interests to have you in prison and the child being taken into care or being looked after by somebody else”. However, if you do not have to take the parent away from the child but if you can enforce an order by some other means then that is more effective. What is important, I think, is the psychological effect of this, that the parent will be told, “These are the options. It is not simply imprisonment now or a fine, which is unlikely to be levied, but a community service order or a curfew order”. It is extremely unpleasant for the recipient to have their lives interfered with in that way and I think that you are more likely not to have to enforce it if an effective sanction such as that is hanging over the head of the possible offender.

Mr Bell: I have been advising a number of fathers who have come to us about an order from the European Court of Human Rights which says that it is the court’s responsibility to see that its own orders are enforced. Am I allowed to give the name of the—

Q200 Chairman: You cannot give names of cases.

Mr Bell: It is a European Court of Human Rights ruling.

Q201 Chairman: I understand that; that is fine. We do not want cases mentioned or names of people involved in cases.

Mr Bell: I have been giving them this and the judges have followed the European Court of Human Rights ruling.

Q202 Chairman: And you are saying that the European Court would say on this that the court must enforce it?

Mr Bell: Yes.

Q203 Chairman: What sort of enforcement would you like to see? Are you with Mr Harris in looking at things like community service orders?

Mr Bell: I would agree that all the orders that have been suggested in this Bill would probably be quite effective.

Q204 Jonathan Shaw: In your evidence you mentioned withdrawing driving licences. Is there anything else you would like to see?

Mr Baker: There was quite a wide brainstorming some years ago and only a very few of those have got into the Bill. I am not sure that they were gone into thoroughly so I think there ought to be another session, perhaps before the Bill, into brainstorming about the range of options. It will be the judge always who decides which is the most appropriate one and there will of course be many situations where any particular one is not appropriate, but things like withdrawing driving licences, or some of the other sanctions that are sometimes used by the CSA, should perhaps be the subject of more brainstorming as to whether they should be added to the list of options.

Q205 Jonathan Shaw: Unpaid work might be quite a wide and variable sanction with differences from court to court.

Mr Baker: Yes. That is by far our preferred option, not least because it dovetails with the parenting time.

Q206 Chairman: You all recognise the problem that if this person does not follow an order at the end of the day the only option a court has is prison?

Mr Baker: There always has to be the final solution. Otherwise the message will go out exactly the same as the message that goes out now: “Ignore it and nothing will be done”. The message needs to go out now that you simply cannot refuse to participate in these things and still nothing will be done. If that happens we will be in exactly the same position as now. People will say that compliance is voluntary. There has to be a final sanction.

Ms Secker: I think the message must be that this range of sanctions shows that society disapproves of the behaviour of whichever parent, mother or father, is damaging the child. At the moment the culture in the wider field of people working with families, even barristers and solicitors, is to perpetuate the notion that sanctions will not be applied. Only last week, and I am not mentioning any names, a barrister advised a father that in a certain court there was no way that a penal notice would be enforced. That sends entirely the wrong message to a mother that has not allowed a child to see the child since Christmas.

Q207 Vera Baird: I wonder if any of you have given any consideration to what kind of unpaid work would be appropriate to try to ensure, which is what we are talking about, less punishment and more ensuring compliance? Ought it to be something to do with children in order to make a link as opposed to cleaning graffiti off, which is very hard to relate to what you are intending to enforce? I see Mr Harris nodding.

Mr Harris: I am nodding because it immediately comes to mind that there are a number of activities involving children which require volunteers. We run grandparent and toddler groups, for instance, and there are lots of parent and toddler groups and they require assistance and help and much of that is voluntary, but it does seem to me that groups such as that, perhaps organised through the Sure Start programme or something along those lines, could
provide appropriate outlets so that also there would be the educative effect of working with children, seeing how other people relate to them and seeing, importantly, how other people put the child’s needs before satisfying their own emotional needs, because that is what this is often about. I would hope that one could devise programmes, and CAFCASS ought to be quite active in this. It is part of their activities, their policies, in promoting education about parenting. I think CAFCASS could certainly, as part of the support function, support such groups and they would provide a convenient route for people who are subject to court orders.

Q208 Ann Coffey: In written evidence from Families Need Fathers you stated that reference to the welfare of children should be deleted from the draft Bill because consideration has already been given to that when a contact order was made. How do you respond to the consideration that imposing a fine or a curfew or some other order on a parent could have a negative impact on the welfare of the child, and therefore at the point that such a penalty is enforced the welfare of the child should be looked at?

Mr Baker: I recognised the potential paradox, of course, in writing that. As you saw, the welfare of the child has already been settled in our view, and obviously judges will have discretion. I think you can leave it to the good sense of the judges to choose the most appropriate orders, and of course they will be the least child damaging and the most child-friendly ones, and of course the minimum that is necessary to ensure compliance. I worry that having this in this phrase will open up in adversarial litigation a whole raft of new issues and it will constitute another raft of barriers to the excluded parents getting their enforcement.

Q209 Ann Coffey: I do not think so because in a sense it is logical. If you accept that the welfare of the child has to be a consideration then it seems logical that that principle is written in at every point along this process, just to make sure that it is there.

Mr Baker: This is of course a political choice. My option would be to say that the whole structure is about the welfare of the child. This is the bedrock of everything. If you were to write that in at this particular point the practical effect would be added to the barriers against enforcement, not to promote the welfare of the child. I would prefer to leave it to the good sense of the judges to choose the least damaging way of achieving the enforcement. It is partly based on experience of what actually goes on in courts where you have a particularly aggressive solicitor who is determined to fight every inch of the way. This will just open up a whole new raft of issues.

Q210 Ann Coffey: But why do we not take it out altogether then and leave it to the good sense of the judges from the start?

Mr Baker: I think it is very important that there be symbolic statements but not here too. That is my feeling. The basis of the whole thing is all about child welfare, of course it is.

Q211 Baroness Gould of Potternewton: When you were speaking, Mr Baker, you identified that this would open up a raft of new issues and barriers. Can you illustrate what you actually mean by that because I do not understand that at all and I do not see why it should happen?

Mr Baker: My argument is that in the practicalities of the court room as soon as this issue is brought in you Q208 Ann Coffey: In written evidence from Families Need Fathers you stated that reference to the welfare of children should be deleted from the draft Bill because consideration has already been given to that when a contact order was made. How do you respond to the consideration that imposing a fine or a curfew or some other order on a parent could have a negative impact on the welfare of the child, and therefore at the point that such a penalty is enforced the welfare of the child should be looked at?

Mr Baker: I recognised the potential paradox, of course, in writing that. As you saw, the welfare of the child has already been settled in our view, and obviously judges will have discretion. I think you can leave it to the good sense of the judges to choose the most appropriate orders, and of course they will be the least child damaging and the most child-friendly ones, and of course the minimum that is necessary to ensure compliance. I worry that having this in this phrase will open up in adversarial litigation a whole raft of new issues and it will constitute another raft of barriers to the excluded parents getting their enforcement.

Q209 Ann Coffey: I do not think so because in a sense it is logical. If you accept that the welfare of the child has to be a consideration then it seems logical that that principle is written in at every point along this process, just to make sure that it is there.

Mr Baker: This is of course a political choice. My option would be to say that the whole structure is about the welfare of the child. This is the bedrock of everything. If you were to write that in at this particular point the practical effect would be added to the barriers against enforcement, not to promote the welfare of the child. I would prefer to leave it to the good sense of the judges to choose the least damaging way of achieving the enforcement. It is partly based on experience of what actually goes on in courts where you have a particularly aggressive solicitor who is determined to fight every inch of the way. This will just open up a whole new raft of issues.

Q210 Ann Coffey: But why do we not take it out altogether then and leave it to the good sense of the judges from the start?

Mr Baker: I think it is very important that there be symbolic statements but not here too. That is my feeling. The basis of the whole thing is all about child welfare, of course it is.

Q211 Baroness Gould of Potternewton: When you were speaking, Mr Baker, you identified that this would open up a raft of new issues and barriers. Can you illustrate what you actually mean by that because I do not understand that at all and I do not see why it should happen?

Mr Baker: My argument is that in the practicalities of the court room as soon as this issue is brought in you Q208 Ann Coffey: In written evidence from Families Need Fathers you stated that reference to the welfare of children should be deleted from the draft Bill because consideration has already been given to that when a contact order was made. How do you respond to the consideration that imposing a fine or a curfew or some other order on a parent could have a negative impact on the welfare of the child, and therefore at the point that such a penalty is enforced the welfare of the child should be looked at?

Mr Baker: I recognised the potential paradox, of course, in writing that. As you saw, the welfare of the child has already been settled in our view, and obviously judges will have discretion. I think you can leave it to the good sense of the judges to choose the most appropriate orders, and of course they will be the least child damaging and the most child-friendly ones, and of course the minimum that is necessary to ensure compliance. I worry that having this in this phrase will open up in adversarial litigation a whole raft of new issues and it will constitute another raft of barriers to the excluded parents getting their enforcement.

Q209 Ann Coffey: I do not think so because in a sense it is logical. If you accept that the welfare of the child has to be a consideration then it seems logical that that principle is written in at every point along this process, just to make sure that it is there.

Mr Baker: This is of course a political choice. My option would be to say that the whole structure is about the welfare of the child. This is the bedrock of everything. If you were to write that in at this particular point the practical effect would be added to the barriers against enforcement, not to promote the welfare of the child. I would prefer to leave it to the good sense of the judges to choose the least damaging way of achieving the enforcement. It is partly based on experience of what actually goes on in courts where you have a particularly aggressive solicitor who is determined to fight every inch of the way. This will just open up a whole new raft of issues.

Q210 Ann Coffey: But why do we not take it out altogether then and leave it to the good sense of the judges from the start?

Mr Baker: I think it is very important that there be symbolic statements but not here too. That is my feeling. The basis of the whole thing is all about child welfare, of course it is.

Q211 Baroness Gould of Potternewton: When you were speaking, Mr Baker, you identified that this would open up a raft of new issues and barriers. Can you illustrate what you actually mean by that because I do not understand that at all and I do not see why it should happen?

Mr Baker: My argument is that in the practicalities of the court room as soon as this issue is brought in you Q208 Ann Coffey: In written evidence from Families Need Fathers you stated that reference to the welfare of children should be deleted from the draft Bill because consideration has already been given to that when a contact order was made. How do you respond to the consideration that imposing a fine or a curfew or some other order on a parent could have a negative impact on the welfare of the child, and therefore at the point that such a penalty is enforced the welfare of the child should be looked at?

Mr Baker: I recognised the potential paradox, of course, in writing that. As you saw, the welfare of the child has already been settled in our view, and obviously judges will have discretion. I think you can leave it to the good sense of the judges to choose the most appropriate orders, and of course they will be the least child damaging and the most child-friendly ones, and of course the minimum that is necessary to ensure compliance. I worry that having this in this phrase will open up in adversarial litigation a whole raft of new issues and it will constitute another raft of barriers to the excluded parents getting their enforcement.

Q209 Ann Coffey: I do not think so because in a sense it is logical. If you accept that the welfare of the child has to be a consideration then it seems logical that that principle is written in at every point along this process, just to make sure that it is there.

Mr Baker: This is of course a political choice. My option would be to say that the whole structure is about the welfare of the child. This is the bedrock of everything. If you were to write that in at this particular point the practical effect would be added to the barriers against enforcement, not to promote the welfare of the child. I would prefer to leave it to the good sense of the judges to choose the least damaging way of achieving the enforcement. It is partly based on experience of what actually goes on in courts where you have a particularly aggressive solicitor who is determined to fight every inch of the way. This will just open up a whole new raft of issues.
Mr Harris: While the Grandparents Association has no strong feelings about this, I certainly accept the logic of what has been said by Families Need Fathers in relation to this. The question I would raise to the draftsman on this is, since these sections are amendments to Part 2 of the Children Act, why do you need to have that subsection in because in making any decision relevant to the child in section 1 it says that the court must consider the child’s welfare as the paramount consideration, so it seems to me that, for instance, 11A(8) is otiose. One could raise this almost as a question of drafting: why do you need this additional provision when it is already there? That is I think the stance that we would take but, as I said, we do not feel that strongly about it.

Baroness Howarth of Breckland: The concern I have now is that I seem to have a different position here in that it seems to me we are talking about practice in court as against the law. If the child’s needs are paramount throughout then they are paramount at that moment anyway, so whether we write it here or not that will make no difference to the practice in terms of making sure that whatever is properly reviewed is properly reviewed. The issue is about practice in court and judges vary enormously in the way they deal with that and that is perhaps a different issue. We have to be absolutely clear that the child’s needs are paramount throughout this process and the effect that has on practice might go one way or the other but it is not to do with the law.

Chairman: I am going to leave it now, I am afraid, in this session. Thank you all very much. If you have something else to add as a result of these exchanges then please write to us.

---

**Supplementary memorandum from the Grandparents’ Association**

When I gave evidence I mentioned the desirability of aligning section 1 of the Children Act 1989 with section 1 of the Adoption and Children Act 2002 in terms of the criteria mentioned in the welfare checklists in the respective sections. In particular, section 1(4)(f) of the 2002 Act has its counterpart in section 1(3)(f) of the 1989 Act, but the latter is much less helpful in addressing the value of the relationships that a child may have with relatives other than the parents. I set out the respective subsections below for comparison, and I suggest that it would assist the courts, and benefit children, if s.1(3)(f) of the 1989 Act were to be amended to incorporate the wording of s.1(4)(f) of the 2002 Act. I am mindful of the fact that s.1 of the 2002 Act applies specifically to adoption decisions, but I do not think that that detracts from the general point that I am seeking to make.

Children Act 1989, s.1(3)(f)—

1(3) . . . the court shall have regard in particular to—

(f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

Adoption and Children Act 2002, s. 1(4)(f)—

1(4) The court . . . must have regard to the following matters (among others)—

(f) the relationship which the child has with relatives, and with any other person in relation to whom the court considers the relationship to be relevant, including—

(i) the likelihood of any such relationship continuing and the value to the child of its doing so;

[(ii) the ability and willingness of any of the child’s relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child’s needs,

(iii) the wishes and feelings of any of the child’s relatives, or of any such person, regarding the child.]

The passage in [ ] above might need to be qualified to apply only to circumstances arising under Parts IV (Care and Supervision) and V (Protection of Children) of the 1989 Act, but (4)(f)(i) is clearly relevant to questions of contact, and it requires the court to give careful consideration to relatives in general.

In evidence I also mentioned the enhanced value that could be given to section 16 of the 1989 Act (Family Assistance Orders) in providing assistance in difficult contact cases. This could be done by removing the restrictions on making such orders which sub-section (3) imposes, namely that such orders may only be made in exceptional circumstances and, more importantly, that every person named, save the child, must to consent
to the order being made. A simple repeal of sub-section (3) would have the desired effect, as this would give the courts another means of involving CAFCASS Officer/social worker in befriending the child and advising the adults over a period of up to six months.

March 2005

Memorandum by Overseas Adoption Helpline

1. Overseas Adoption Helpline (OAH) welcomes the opportunity to give evidence to the Joint Committee. OAH is an independent information and advice service on intercountry adoption matters and as such provides adoption support for prospective intercountry adopters, established adoptive families, adopted people and adoption professionals. OAH is a registered charity to which 76 organisations (local authorities and voluntary adoption agencies) have taken out annual subscription.

2. Gill Haworth is founder Director of OAH. She holds a B.Sc (Sociology) London University, M.Sc in Social Work and Social Administration and Certificate of Qualification in Social Work London School of Economics. She began her career in social work in 1971, qualifying in 1975. From 1975 to 1977 she was a specialist adoption social worker in LB of Tower Hamlets, becoming Team Manager of that borough’s Adoption & Fostering Section in 1977. She moved to the voluntary sector in 1984 as Principal Consultant for the newly formed charity, The Bridge Child Care Development Service (The Bridge). Whilst at The Bridge, she founded the former Overseas Adoption Helpline, an experimental project funded by the Department of Health and hosted by The Bridge between 1992 and 1997. In March 1997 she formed the current OAH. She is Vice Chair of the Network for Intercountry Adoption (NICA),

3. Naomi Angell is Legal Advisor to Overseas Adoption Helpline. She is a solicitor in private practice, specialising in children’s law, including international and domestic adoption. She is Chairperson of an adoption panel and vice chair of the Association of Intercountry Adoption Lawyers. Throughout her legal career she has been involved in legal policy work and was a member of the Lord Chancellor’s Advisory Board on Family Law and the Children’s Act Sub-committee of the Board and also of the Law Society’s Family Law Committee. She was closely involved in the briefing of both Houses of Parliament on the Adoption (Intercountry) Aspects Act 1999 and on intercountry adoption issues in the Adoption and Children Act 2002 and was a member, with Gill Haworth, of the BAAF co-ordinated Nuffield Project, a stakeholder’s briefing group on the 2002 Act.

4. DRAFT CHILDREN (CONTACT) AND ADOPTION BILL—PART 2 ADOPTIONS WITH A FOREIGN ELEMENT

4.1 Introduction

On 22 June 2004, Children’s Minister Margaret Hodge announced the introduction of a temporary suspension of adoptions of Cambodian children by UK residents. This was the first and, to date, only time that such a step has been taken on behalf of the UK in respect of any state of origin of children for intercountry adoption. We understand that the decision was taken after thorough research and careful consideration and we do not question that decision.

4.2 We welcome the purpose of this draft legislation; to provide a statutory framework for the suspension of intercountry adoptions from specified countries where there are serious public policy concerns about the process of intercountry adoptions from those countries. We fully subscribe to the paramountcy of the child’s needs and best interests in any intercountry adoption. However, the feedback we have had from families following that decision and the manner in which it has been implemented, has caused us to reflect on the optimum transitional arrangements for its implementation.

4.3 In addition, there is general agreement that the bringing into force, on 1 June 2003, of unimplemented provisions of the Adoption (Intercountry Aspects) Act 1999 and of parts of the Adoption and Children Act 2002, relating to intercountry adoption has not been without its problems. With the benefit of nearly two years of working with this new legislation and gaining first hand experience of unresolved issues we would therefore hope that advantage could be taken in this Bill, to include provisions which would address the main problems that have arisen and ensure those primary statutes achieve the ends intended. In addition to commenting on the draft Bill we will, therefore, also be making recommendations relating to additional provisions that could be added to it.
5. Proposed amendments to Part 2 of the Bill

5.1 S.6.(3)

We are surprised that it is considered immaterial whether the other country is a Convention country or not, and question what discussion has taken place between the Central Authority and the Hague Conference on this point. We have understood up to now that it is only possible for a contracting state to enter a reservation in respect of a country which has acceded to the Convention, not in respect of a state which has ratified the Convention. If we have misunderstood, and there are no such limitations we feel strongly that there should be specific provision requiring the English and Welsh Central Authorities to air concerns and seek reassurance through the Hague Conference framework before special restrictions are introduced.

5.2 S.6. (5)

We would hope that the threshold tests, which need to be met before a state of origin is deemed a “restricted country”, will be set out in regulations. We question how these tests will fit with the criteria to be relied upon under the Adoption & Children Act 2002 to draw up a new designated list? We also question whether, when a state of origin which is on the Designated List or is a contracting state to the Hague Convention is declared a “restricted country”, it’s status as a Designated or Convention Country will also be suspended?

5.3 We are concerned that there is no reference on the face of the bill to a process of dialogue/consultation between the UK and the country which the UK is considering declaring a “restricted country”. There should be, in our view, such a requirement also to have some dialogue with the Central Authority or other responsible body in the state of origin (preferably in relation to all countries but essentially in respect of countries on the designated list and Convention countries) before reaching the decision and publishing reasons.

5.4 In addition, we urge that the Secretary of State be required to give warning in advance that a state of origin is about to become a “restricted country”, other than in the most exceptional circumstances. If there is to be provision for the country concerned to have a right of representation, which we consider there should be, this provision would give time for such representation to be made and considered.

5.5 This period of warning would have value for the prospective adopters as well. It may not be fully appreciated that prospective adopters find the selection of country to which to apply one of the most challenging element of the process. The number of countries to which UK applicants can apply are much more limited than for applicants from other countries in Europe, North America or Australasia, because many Convention, Designated and other countries prefer to work with linking agencies dedicated to intercountry adoption, in the receiving countries, and the UK has no such agencies.

5.6 The choice within that limited range, will be influenced by practical issues eg the cost of completing the adoption process, the number of times the sending country’s procedures require applicants to visit the country, eligibility of individual applicants to adopt from a particular country and the profile of children waiting for an adoptive family. The child will always benefit from the requirement of the UK intercountry adoption and home study process that prospective adopters actively developed an attachment to and sound knowledge of the country from which they wish to adopt, to help ensure their child’s cultural identity post adoption.

5.7 If the applicants do not have a personal connection with a country (and many do), before their application to adopt, they often go to extraordinary lengths to research their chosen country, its history and peoples, to visit the country to experience it at first hand, and become involved with UK communities from that country and with other UK families who have adopted from there. Many adopters talk about adopting the country as well as the child, and this process begins long before the application papers are forwarded to the state of origin and a child referral, or match, is proposed. The imposing of restrictions preventing applicants who have acquired a substantial commitment to adopting from a particular country can therefore be likened in some senses to bereavement and the impact of it should not be minimised.

5.8 It is for these reasons that we wish to emphasis the need for any statutory framework to be sensitive to the position of the adoptive parents, alongside its duty to maintain the child’s needs as paramount. The transitional arrangements which were applied in respect of the temporary suspension of adoptions from Cambodia, imposed a cut off point of all applicants other than those who had been matched by the Cambodian authorities with a child. OAH is of the opinion that a different cut off point would have been preferable and would not have compromised the best interests of the children concerned.

5.9 The chosen cut off point had the disadvantage of “catching” applications from prospective adopters whose applications were already forwarded to Cambodia but had not yet been matched with a child, a stage which it is likely to have taken applicants up to two years to achieve, and some even longer. They will also have incurred up to £5,000 costs in respect of their UK home study report.
5.10 Because of earlier reported concerns about the adoption system in Cambodia and the potential for unethical adoptions and child trafficking, many applicants at all stages of the process, including those who had been matched, were themselves taking every possible step to validate the background information they had been given about a child they had been matched with and the orphanage through which they proposed adopting. They undertook this process to satisfy their own need to be certain that the child they would bring up would have no other possibility of a loving family, to meet the requirements of the entry clearance officers (whose own enquiries in Cambodia were most robust) and to meet the requirements of the UK adoption proceedings. OAH has been advised that, so far as can be determined, there has been no unethical adoption of a Cambodian child by applicants from the UK.

5.11 In such circumstances, we consider that a preferred approach in respect of future such decisions would be to provide a notice period to all parties and to allow all adoptions to proceed where the DiES Certificate of Suitability and Eligibility had been granted. If it proves necessary to enhance the enquiries made by Embassy officials, in respect of the small number of additional adoptions involved this should be possible. We understand this happened in Cambodia, and some years ago when similar concerns were expressed about Guatemala the DoH, which was then the lead department for intercountry adoption, and the British Embassy in Guatemala introduced special measures, i.e DNA testing for relinquished children. This practice continues today.

5.12 S.6(8)

We question whether it is sufficient just to “review”.

5.13 When the UK entered its reservation to Guatemala’s accession to the Hague Convention, we understand that the UK Central Authority offered assistance to the Guatemalan Central Authority to develop procedures and a system that would more effectively safeguard the rights of children to be placed for intercountry adoption. In respect of Cambodia, it is reported that the Governments of the United States and France, which, among others have also suspended intercountry adoption with Cambodia, are working with the Cambodian authorities to achieve the conditions which will allow intercountry adoptions to resume. For the sake of children for whom intercountry adoption is the only chance of family life we would recommend the inclusion of a provision to co-operate with the relevant authorities in the “restricted state” towards the resumption of intercountry adoptions.

5.14 S.7(3)

The wording of this clause is complex and difficult to understand. The explanatory note to the Bill states that the sub-section requires regulations to make provision for exceptional cases to be considered when a country is declared a “restricted country”. There is such process in relation to the Cambodian suspension but concern has been expressed by prospective adopters caught by the suspension that the process is not transparent or accountable. When such a significant decision is being made by a Government Department involving respect for family life of both a child and prospective adopters there is a need for a clearly set out procedure for consideration of special circumstances cases at all stages in the process and not just in relation to cases where a particular named child is involved, as would appear to be envisaged by S. 7(3). We also feel that because of the significance of the decision involved an independent appeal process in relation to the Minister’s decision on exceptional circumstances would provide desirable accountability and transparency and we would suggest that the Independent Review Mechanism established by S.12(1) Adoption and Children Act 2002 and already in operation be used for these appeals.

5.15 S.8

This section is very difficult to understand and the explanatory notes do not greatly assist. It would appear to provide for the imposition of an extra condition to be applied in relation to a country on the restricted list eg a requirement for DNA testing of relinquished children and their birth parents as in Guatemalan adoptions. It would be helpful for there to be a clearly worded provision for the imposition of such conditions where it is not considered necessary to put in place a total suspension on a particular country.
5.16 S.8(3)

This subsection makes it a criminal offence to bring a child into the UK in breach of a condition under this section. There is no parallel provision in relation to bringing a child into the UK in breach of S.7 restrictions.

Difficulties which have Emerged with Implementation of the Adoption (Intercountry Aspects) Act 1999 and Adoption and Children Act 2002.


6.1 The phrase “. . . a child adopted by the British resident under an adoption effected, within the period of six months ending with the dates of the bringing in,” to the UK is the definition of a class of applicants who must comply with the requirements in regulations to obtain advance home studies etc. if they are not to commit criminal offences. In S.6(2) of the Bill the definition is also used in relation to a class of applicants to whom the special restrictions and conditions will apply.

6.2 The requirement for applicants to obtain advance home study reports from an English or Welsh adoption agency and for the reports to be certified by the DfES was to close a loophole which had previously existed. This loophole had enabled adopters to bring a child into the UK after the making of a foreign adoption order recognized by the UK without a prior adoption agency home study report.

6.3 Although prospective adopters who wish to avoid complying with the proper procedures providing safeguards for the child, are a small minority the current regulations enable circumvention. Following the child’s adoption prospective adopters make arrangements for the child to remain in the state of origin until the six month period after the foreign adoption has elapsed before making an application for the child’s entry to the UK. Additionally if the prospective adopters do not bring the child into the UK for at least six months after the making of the foreign adoption they are not required to live with the child in the state of origin during that qualifying period.

6.4 In our opinion the qualifying period is too short to be effective and should be increased to ensure that all prospective intercountry adopters are properly assessed as suitable to adopt.

7. Time Periods That The Child Must Live With The Prospective Adopter Before An Order Can Be Made

7.1 There is concern about the specified time periods during which a child must live with adopters before an order can be made which it is felt are likely to run counter to the best interests of children. The problem time periods are as follows:-.

7.2 The UK as a State of Origin—time period for which the child to live with applicants.

The implementation of Adoption (Intercountry Aspects) Act 1999 provides for the UK to be a State of Origin under the Hague Convention. Implementing regulations and guidance require a child to be freed for adoption prior to the “intercountry best interest decision” being recommended by the agency adoption Panel.

7.3 The decision of Re B Court of Appeal (Thorpe & Neuberger LJJ and Gage J) 28 April 2004 [2004] EWCA (Civ) 515 identified the significant difficulties this presents for effecting such a placement in a timely fashion for a child when an adoptive family habitually resident outside the UK is deemed the family of choice for the child.

7.4 Re B clarifies that children who are freed for adoption are no longer “in care” following the making of a freeing order and, therefore, cannot be the subject of an application for leave to place a child in care outside England & Wales, under schedule 2, paragraph 19 of the Children Act 1989.

7.5 An order under Section 55 Adoption Act 1976 is consequently required. S.55 provides for someone not domiciled in the UK, to apply for an order giving them parental responsibility for a child and permission to take the child to his or her country of domicile for the purposes of adoption there. Amongst other conditions, a S. 55 order cannot be made unless the child has lived in the UK with the applicant for at least six months before the date of the making of the S 55 Order.

7.6 Intercountry Adoption Guide, published by the Department of Health in May 2003 Part II “UK as a State of Origin” Chapter 12 sets out the process to be followed when considering the placement of a child with applicants who are not habitually resident in the UK. At point 29 it refers to the effect of a S 55 order being to “allow the prospective adopter to take the child out of the UK for the purposes of adoption”, but as it does not set out the six month residential requirement, could be misunderstood.
7.7 The Adoption & Children Act 2002, yet to be implemented, has similar provision to sections 55 & 56 of the 1976 Act, although the required period of common living in the UK is reduced to 10 weeks, prior to the making of an application.

7.8 These restrictions are likely to inhibit the placement of children outside the UK for the purposes of adoption eg where the best placement for a child subject to care proceedings here is to be adopted by a relative living in abroad.

7.9 We recommend that this bill include provision to amend the current legislation to provide for the 10 weeks qualifying period to be waived when the best interests of the child require a shorter period of common living.

8. The UK as a receiving state—Child to live with adopters before Application

8.1 The Adoption and Children Act 2002 S.42(5) provides that an application for an adoption order cannot be made in a case where the applicants have not complied with the requirement in regulations regarding prior home study reports etc. until the child has had his home with the applicants for three years, unless there is leave of the Court for an application to be made sooner.

8.2 We appreciate the need for a different approach to be taken to applications where the adoption in the state of origin has not been arranged in a manner compliant with regulations. However, it is our view that to prevent an application being made for three years is inappropriate and does not place the child’s needs as paramount when the only possibility of permanency and certainty will be if the Court gives leave for an earlier adoption application to be made. Such delay will also mean that the child is likely to have formed an attachment to the prospective adopter which would make it difficult to move the child without causing him or her considerable trauma.

8.3 At present, no one has parental responsibility for a child before an adoption order is made in the UK, although we understand that this is under review. It is our view that it is likely to be children whose adoptions have not been arranged according to required procedures who are the most vulnerable and for whom delay of this nature is least desirable. Court decisions in non-compliant cases have stressed that it is these cases above all which should come into the court arena and under judicial management at the earliest time so that matters of parental consent or other areas where there is an absence of information or clarity can be identified swiftly and appropriately investigated and resolved.

28 February 2005

Examination of Witnesses

Witnesses: Mr Nigel Cantwell, UNICEF, and Ms Gill Haworth, Director, and Ms Naomi Angell, Legal Adviser, Overseas Adoption Helpline, examined.

Q215 Chairman: Can I welcome you today? Mr Cantwell, I believe you have come in from New York. Mr Cantwell: No, Geneva, a little closer but just as cold.

Chairman: It is very good of you. We are looking at this area of adoption, which is a very small part of the Bill but an important part.

Q216 Baroness Hooper: Yes, it is an important part and we well know the cases that have been raised in the past which have caused a lot of anguish. It is generally considered that the provisions are uncontroversial and I would like to know whether that is your opinion, or whether there are any provisions that cause you concern. Perhaps at the same time I could refer specifically to clause 6 of the draft Bill which allows the Secretary of State to declare that, because of practices taking place in another country or territory in connection with adoption, it would or could be contrary to public policy to further the bringing of children into the United Kingdom in particular cases. In that context I would be interested to hear your views on what you consider “public policy” to mean.

Mr Cantwell: To answer that question first, I think it is clear that “public policy” is not something that is very easily definable but is a kind of concept to cover the general intentions of a state or a government in terms of its initiatives on a legislative and more specific policy level. Here I would take “public policy” simply to mean: first of all corresponding or complying with international obligations on children’s issues in the various conventions that apply; and obviously taking the best interests of the child (or the welfare of the child, if you wish) as being paramount or a primary consideration in any dealings relating to the child. I would take it as broadly as that and then one would clearly have to look at any specific initiatives in relation to international obligations.

Q217 Baroness Hooper: Can you give us any examples of this from your own background knowledge?
Mr Cantwell: I am not quite sure what you mean.

Q218 Baroness Hooper: Countries from where it has been felt that it would be contrary to public policy to allow adoptions.

Mr Cantwell: Certainly. I was coming on to the second part of your question. There are two sides to this admittedly short aspect of the draft Bill. One is the general idea of being able to say, at a given point, “We will not accept adoptions from a given country”. This has anyway been done on an *ad hoc* basis, and I think it is absolutely vital, without any doubt whatsoever, that there should be a very clear message sent to the general public as well as to other governments that there are moments when one has to call a halt. On the other hand, the important thing we have to decide is: when do we try to call that halt; not just in terms of country situations but also—and this is my big concern about this particular text unless I have misinterpreted it—in terms of the fact that the ability to refuse entry of a child seems to me to come much too late in the process. I can give you a couple of examples of situations where we have felt a little frustrated in terms of reactions from receiving countries. In the nineties and the early part of this decade, there were many countries in eastern and central Europe and central Asia alone, that of their own accord felt it absolutely vital to impose moratoriums on inter-country adoption. None of the receiving countries had reacted to the problems and it was left up to the country of origin, with very often extremely poor resources and perhaps not the most efficient systems in place, to impose the moratorium. There are about ten, in other words more than a third, of these countries1 that at least one point during the past 13 or 14 years have imposed moratoria, and clearly the moratorium was imposed because they felt unable to guarantee the proper processing of inter-country adoptions from those countries. The second example I would give, in fact a double example, is about the situation in Cambodia and the situation in Guatemala. It seems that the UK finally decided against accepting adoptions from Cambodia in July last year, which was at least two and a half years after the US did and a long time (a different length of time according to the country) after a wide range of other receiving countries did so. I am not quite sure why this situation came about—whether the UK government was not convinced that there were problems in Cambodia but there was a great deal of evidence, including studies by the government of the Netherlands to show that there were major problems, and of course the Cambodians themselves had admitted to there being problems. UNICEF for the past eight years has been trying to work with the authorities to come up with a new law,

1 *Note by the witness*: In central and eastern Europe and central Asia.

double example, is about the situation in Cambodia and the situation in Guatemala. It seems that the UK finally decided against accepting adoptions from Cambodia in July last year, which was at least two and a half years after the US did and a long time (a different length of time according to the country) after a wide range of other receiving countries did so. I am not quite sure why this situation came about—whether the UK government was not convinced that there were problems in Cambodia but there was a great deal of evidence, including studies by the government of the Netherlands to show that there were major problems, and of course the Cambodians themselves had admitted to there being problems. UNICEF for the past eight years has been trying to work with the authorities to come up with a new law,

because there is still no law governing inter-country adoption, but I will not go into the details of that. It seems to me that in that kind of instance we have a very clear indication, of a problem in the country when there is no law governing adoptions. Guatemala is a reverse situation where the US, for example continues to allow adoptions from Guatemala, as does, as far as I gather, the UK. But again a large swathe of countries has decided that the conditions in Guatemala are not propitious to enabling inter-country adoptions to be carried out in the best interests of the child. I could give you other examples but I do not want to take up time. Frankly, it is such a fascinating subject and one is never quite certain to what extent the interests of the child are behind the decisions or whether there are other interests, and this is a major problem.

Q219 Chairman: You are very fairly summarising what an incredibly difficult area this is and we might want you to give more information later. Can I ask if Overseas Adoption Helpline has a view on what has been said?

Ms Haworth: Yes. As far as what is “against public policy” is concerned, I am picking up what Mr Cantwell was saying. We do not believe there is any one factor. It is not an easy definition. There will be lots of factors that come into play and Mr Cantwell approached this in a general way. Some of the things that we think would cause great concern are if there was first of all in the country an absence of any system at all to ensure that there is official oversight when birth parents relinquish their children or to ensure that there is an attempt to re-unite children when they are abandoned or, where such provision actually does exist, it is clearly not implemented in any effective way. We think that would be one factor that one would need to look at quite carefully. We would be worried as well, because sometimes traditions and customs work against the development of domestic adoption, but I think we would be concerned if alongside this there was no provision for domestic family placement programmes or for adoption programmes, however limited they might be. We would also be concerned if there was a pattern, and I think we are talking about systemic things here, not just individual cases, because, sadly, whatever country people may be applying to, there is always the possibility of unethical or unofficial arrangements even in the best, well-established, well monitored systems, so I do not think we can be complacent with any country really. If there is a pattern of a country accepting applications from those who have not been properly prepared and assessed in their own country and are not coming forward with the approval of their state of origin, we would find that worrying too. Sometimes there could easily be a pattern of concern over the provenance of children who are actually
being put forward for inter country adoption. One small example I recall: when I was in Delhi there was concern, a number of children’s applications coming to the US Embassy. All the stories were absolutely the same. They had 12 identical applications in a short period of time. That sets some bells ringing. That sort of thing as well, I think, would be a problem. Where professional fees which are charged are clearly completely out of step with the cost of living and the professional salaries in that country, that would be something that one would be exceedingly concerned about. Obviously, if there is actual evidence of child trafficking, where there is no system of sanctions against those involved, or, if there are sanctions, that they are not applied. I think there is a combination of things.

Q220 Chairman: Is there, or could there be, a set of criteria which would find general agreement? In a way you are both saying these are the sorts of things which would make us worry about the country. Is there a set of criteria? Could there be a set of criteria which would lead you to conclude that a particular country was not one in which adoption should be considered outside special cases?

Ms Angell: I think they would have to be reasonably general, because it is a huge range of concerns that have been raised. I would add to that I feel there should be a dialogue with countries where there is concern about their procedures. If there is a failure to respond in a reasonable way to those concerns over a period of time, that would cause concern. Different countries raise very different issues. As an illustration of that, for instance, in Guatemala the concern was on the provenance of relinquished children, that the people giving the children up for adoption may not be the mothers but were saying that they were, and what was put in place there was DNA testing by the British Embassy to provide those sorts of safeguards. In Cambodia children are not relinquished on the whole; it is mainly that they are abandoned, and it is very difficult then. DNA testing would not work, so one is having to look at very different solutions. I think any criteria would have to be broad and general.

Q221 Ann Coffey: Just to explore that a little bit more, if there could be a general agreement about what you might identify as being systemic abuse over a period of time, how would that information come into countries like the UK? Would UNICEF have a role in that?

Mr Cantwell: My feeling is that there is now a wide potential range of credible sources, in respect of possible abuse of systems. Obviously there are organisations such as UNICEF, such as Save the Children, etcetera, who have done or sponsored reports in different countries, and I would say quite often courageous reports, or on problems relating to inter country adoption, but let me come back to my very first example. I actually quite strongly believe that the authorities of the countries concerned—obviously not in all cases, but in many, many cases—are themselves the source of expressed concerns that could be picked up by countries such as the UK or any other receiving country. That is certainly the case in Cambodia where on several occasions the Authorities there have stated very clearly, “We are not in a position to deal with this, we cannot cope”, and yet the situation rolled on. There are local NGOs too: for example, in the case of Cambodia, there is a league for human rights which has done tremendous work on this. Then you have the consultation process that exists within the framework of the Hague Convention, for example, the special commissions. We had one such meeting in 2000, a large part of which was devoted to the case of Guatemala, there is the Committee on the Rights of the Child, the special rapporteurs, within the UN system itself. There is a whole range of sources of information, I think.

Ms Haworth: I would support that. Obviously, in addition, since 1 June 2003 we have been a contracting state to the Hague Convention, so we are in a much better position now to network and have a global view from people who will have had much more experience of inter-country adoption than we have. This is something that we need to flag up. In somewhere like Sweden, they have had really well organised specialist agencies working in inter-country adoption for getting on for 40 years, certainly 35 plus. We are very new arrivers here. I think we need to acknowledge that. There are lot of fellow central authorities whom we could get a lot of assistance from. Certainly the central authorities in Europe. I believe, meet from time to time, so there are possibilities there. There are agencies that meet under an organisation called Eurodopt. Unfortunately, we are not able to be full members of that because we do not have a system that allows us to meet their standards for membership, but it is again another forum that we can actually—

Chairman: What are we missing out on? What do we not have?

Q222 Baroness Howarth of Breckland: What do we not have?

Ms Haworth: We do not have specialist inter-country adoption agencies that have representatives in the overseas countries and that work collaboratively with them, and there are a number of countries that are closed to UK applicants because we do not have that system.

Q223 Chairman: Is that because there has always been ambivalence in Britain about inter country adoption?
Ms Angell: I feel much of the law has been put in under these incredibly complex structures of agencies, such as the Swedes do. Firstly, which other agencies who know exactly what they are doing and that you see as key to all this having specialist having to reinvent the wheel every time they do an adoption. They do not want to work with individuals who are disadvantaged because we are trying to adapt a very strong domestic system to meet the very special and different needs of an inter-country adoption system, whereas other countries do not have much of a tradition, if any, of domestic adoption have evolved their systems exclusively and specifically around inter-country adoption, and I think the two do not fit always very well. We do not have any specialist agency that has actually moved into offering a service to support adopters once they are approved and in making the arrangements for the match. They are left on their own to do that, unlike any applicants from any other European country, so far as I know.

Q224 Baroness Howarth of Breckland: Accepting that this is a highly complex area and that we do have these very poorly-matching legal systems across the world, indeed, very much across different kinds of developed countries, what would you like to see in legislation that would make this different? What has been said about this draft Bill is that these provisions are uncontroversial and, therefore, every other witness is saying, “We accept this and we move on.” You are the people who really understand what might make it better for children from other countries to be properly adopted and to prevent trafficking at this moment in time. You are key witnesses, and so we need to know from you what it is you would like to see that would make a difference? Ms Angell: I feel much of the law has been put in place. Up until 1999 we had no legislation dedicated to inter-country adoption. We were having to fit into inter-country adoption very uncomfortably into domestic adoption legislation. Things are far better. We have been unable to join the international community, and there are still problems, and many of them are practical ones. I think the lack of an agency is a huge one if one looks at child protection as well: because I think British families are thrust more onto the less well-organised countries, Cambodia being one of them, because many of the best-organised countries do not want to work with British families. They do not want to work with individuals who are having to reinvent the wheel every time they do an adoption. They want to work with professional agencies who know exactly what they are doing and understand these incredibly complex structures of interfacing immigration law, domestic adoption law and the other legal systems as well, as well as all the practical considerations of doing one of the most important things that you do in your life, which is forming a new family and forming a relationship with your child. Until we have such agencies, I am not confident that the spirit of what we have been attempting to do in legislation will be achieved. There are other practical problems, way outside this Bill, one of which is the difficulty that families are having in getting home study reports, particularly in London at the moment. That is the gateway into being able to adopt from abroad and for it to be able to be fair in relation to other European countries, but I am very conscious that we are going out to some degree—

Q225 Baroness Howarth of Breckland: Going back to the draft Bill, in the absence of an agency that works in the way you have just described, what role would other adoption agencies have in advising the Secretary of State on imposing restrictions on adoption in particular countries? How would that advice reach the Secretary of State?

Mr Angell: When one thinks of adoption agencies, one is thinking of the local authorities or the voluntary adoption agencies, who are actually doing home study and, as far as Hague Convention adoptions are concerned, actually being involved in the matching stage of it as well. They will have some information, but I think it will be limited. I do not think there will be a huge amount that they will have which the central authority, the DfES, would not have. However, I think there is a later stage where there should be effective channels of communication which can feed information into, because there is a whole category of families who have to re-adopt in this country. It is the non-designated, non-convention adoptions, where the adoptions are not recognised by this country and they have to re-adopt here. It could also be the convention countries where the adoption has to be completed or done in this country; and then you get a raft of professionals involved—the local authority social workers doing the schedule two reports, the children’s guardians and the judges—and they will gain a lot of information about what actually happened in that adoption, and there should be an effective channel of communication that can feed that information back into the centre. The judges have done it to a degree by the recent decisions where they have been very critical of what has happened in some very notable and high-profile cases, but there should be a more effective channel than that.

Q226 Earl of Dundee: On the development of good practice by receiving countries, you made it very clear that you see as key to all this having specialist agencies, such as the Swedes do. Firstly, which other countries to your knowledge also do. Does Canada?
Then, on Lady Howarth’s point of how the Bill can benefit from what you tell us is important, to what extent is there also two-way traffic between legislation and developing good practice before the law comes in? Thus how near are we to better arrangements anyway and can this Bill encourage them further?

Ms Haworth: I think to some degree, in terms of providing the potential for specialist agencies to be created, it is already there in legislation in that there would be provision for those voluntary adoption agencies and presumably the statutory agencies too, but certainly, if I restrict myself to voluntaries who are offering an inter-country adoption service at present, it would be possible for them to apply to be registered to be what is commonly known as a linking agency to actually undertake that particular function. The 2002 Act, when implemented, will make it more possible for other organisations to join in that activity because the thresholds for accreditation and the inspection standards would be lowered in such a way that it would not be such a big leap for new organisations to come in as adoption agencies for that particular purpose, but obviously it comes down to resources. These services are costly to set up, they are unpredictable because countries can change and close their programmes overnight; so if you are starting off with two countries and then there is a moratorium introduced, it is a bit of a challenge for any small NGOs to consider taking that step, although there would be the provision to do that. Some of the difference between ourselves and countries in Europe and Scandinavia, the majority, if not all of whom, have specialist agencies—we are really out on a limb here—is the way in which the cost of inter-country adoption is met in the UK. Obviously there is a cost, but who pays is a big question. In the UK, in order that a service could be provided in the early 1990s, when it was not so common at all before regulations and guidance were introduced, local authorities were not really volunteering to offer to provide home studies, and what was allowed was for fees to be charged to the applicants in order that the local authorities could provide a service that was not going to be a further burden on them, and was not going to detract from their work, key as it is, in domestic adoption. Those fees now have risen to £5,000 for a home study preparation in some agencies; so before people even move off first base they have got a large fee to pay. If you compare with countries overseas that have specialist agencies, other receiving states, they do not charge for home studies, it is seen as a statutory responsibility. They may make a charge for the linking arrangements, but they will not make a charge necessarily (I know hardly any who do) for that statutory provision, whereas the agency, say, in Scandinavia might get a grant from the Justice Ministry or they might get some start-up monies, the ongoing service is paid for by the applicants, but our applicants are already at a disadvantage because they are paying so much for the statutory provision. So there are all sorts of hurdles to overcome if we are going to get to a point of maximising the chance of the range of specialist agencies that we need.

Q227 Baroness Nicholson of Winterbourne: A couple of points of clarification. Mr Cantwell’s knowledge is very large, clearly, but he did mention the USA as an example. Would Mr Cantwell not agree, however, that the USA is neither a ratifier of the United Nations Convention on the Rights of the Child, nor of the Hague Convention for Inter-Country Adoption and, of course, does not come under the European Convention on Human Rights and is therefore not pertinent to this debate? Mr Cantwell: I would agree that the USA is not pertinent to this debate. I used the USA simply as an example of a receiving country, but I would agree, I am certainly not putting it up as a good example.

Q228 Baroness Nicholson of Winterbourne: Since she is not bound by the conventions that all other countries in the globe such as the CRC, other than Somalia, are bound by, and since she could not be bound by that so she continues to pass life sentences on minors, for example, in contravention, is it not a bit of a red herring? Mr Cantwell: I am sorry. It certainly was not meant to be. It was meant to be purely illustrative.

Q229 Baroness Nicholson of Winterbourne: The second point Article 21(b) of the United Nation’s Convention of the Rights of the Child, does it not lay down very clearly the criteria under which inter-country adoption may be considered by a country as a method of child protection? Does it not state clearly that all other methods of caring for that child in its country of origin—and then it lays those out, including fostering, including other forms of care—must have been tried and that if the child cannot in any other way be cared for in its country of origin; only then can inter-country adoption possibly be considered as a method of child protection? Does that not lay down any criteria, and is there any valid reason for departing from those criteria for the United Kingdom?

Mr Cantwell: It lays down, let us say, the criteria of process, almost by elimination, of attempts to find alternative care for the child, and, indeed, under the preceding Article, the attempt must be made to return the child to the family. This is, I think, a key point—I hope it is not a red herring—In terms of inter-country adoption problems, in a large number of cases, and sometimes the majority, we are not looking at children who are being adopted from
institutions, we are looking at children who are being adopted from families. This is, in my view, one of the major indicators that something is going wrong when you suddenly discover in a given country—which, as Baroness Nicholson knows was the case in Romania, it was also the case in Albania early in the 1990s which they seem to have resolved. Once that balance starts to change, then this is an extraordinarily dangerous indication that something is going wrong, very wrong, with the system. To come back to your specific question, yes, the convention sets out the criterion for process, but it does not resolve the issue of whether children should in specific cases be retained in the country in a non-family situation—and this is not resolved in the Hague Convention either—as opposed to being offered the possibility of going abroad. This leads me to another, I think, fundamental issue. Talking of “public policy”, maybe it would be good to try to introduce it into public policy: perhaps we can get away from this idea that the receiving countries are those expressing the demand for children and the countries of origin are supplying those children, and rather try to turn it round to ensure that the countries of origin, when they feel it necessary for given children in their country, can make application to potential receiving countries so that, if it exists, if the demand is there, the receiving countries are those that would then supply a response to that demand.

**Q230 Baroness Nicholson of Winterbourne:** Mr Cantwell, thank you for that excellent clarification of your earlier point, but what you are indicating is that the criteria for domestic adoption in the UK are widely different from the criteria that the United Kingdom and other countries use when receiving foreign children. In other words, you have indicated, for example, that a stay in an institution is unacceptable and that a family setting in a foreign country is preferable to that, despite the contrary indicative points in culture, in language, all the things we know about, which are in the United Nations Convention on the Rights of the Child to which the United Kingdom is bound and which in 1998 the European Union Council of Ministers declared was an integral part of the implementation of the Treaty of Rome. Therefore, we are bound by this completely. Given this great variation in terms of criteria, and given that we are looking to legislation, what do you feel this law should contain, if anything, which would enable the United Kingdom to deal fairly, as fairly with non-national children and their families as it deals with national children and their families? A simple clear example is parental links. As you correctly say, the bulk of the children being brought into richer countries do not now any longer come from institutions. Indeed, very few of them are orphans, three per cent of them, Romania, for example, and here we have 35,000 institutionalised children, and other countries, including Member States, have considerably more. Therefore, institution is a method of child protection under the UNCRC. What should we do in this legislation to bring a greater measure of fairness in terms of those children’s rights and their parents’ rights, given the very high purchasing power already indicated by Mrs Haworth that is being used at the moment? What could we do in this piece of legislation to protect the foreign children, their families’ rights better than is happening at the moment?

**Q231 Chairman:** I am going to ask you to answer that briefly, I am afraid. I will give you an opportunity of coming back to the Committee in writing at a later stage, but we are very, very tight on time now, so if you could give as brief an answer as you can.

**Mr Cantwell:** I will be extremely brief. I have to say that the receiving countries are those expressing the possibility of opportunity of coming back to the Committee ingoing abroad. This leads me to another, I think, example: perhaps we can get away from this idea that the receiving countries are those expressing the demand for children and the countries of origin are supplying those children, and rather try to turn it round to ensure that the countries of origin, when they feel it necessary for given children in their country, can make application to potential receiving countries so that, if it exists, if the demand is there, the receiving countries are those that would then supply a response to that demand.

**Q232 Baroness Nicholson of Winterbourne:** Two points. One we have had pointed out to us that the Family Law Bar Association said that clause 8(3) of the draft Bill makes it a criminal offence to bring a child into the UK in breach of a condition imposed by that clause, but there is no similar expressed criminal sanction under clause 7 for bringing a child into the UK under a blanket ban for restricted traffic?

**Q233 Chairman:** Naomi Angell, you are a legal officer. I believe, and it is clause 7 and 8?

**Ms Angell:** I agree with that.

**Q234 Chairman:** This is the issue of criminal sanctions?

**Ms Angell:** It does seem it is a gap.

**Q235 Chairman:** It should be in there, you think?

**Ms Angell:** If it is going to be for the special conditions an offence, then it has to make sense that it is going to be for the restrictions.

**Ms Haworth:** Can I say in addition, in our written evidence we have pointed out some of the problems that have arisen with the implementation of the 2002 Act and the 1999 Act and some of those problems are ensuring that there are still loopholes that people can get round the restrictions, and I think that is something that really does need to be seriously addressed. I would like to say, just for the record, that the actual picture of children coming in from overseas countries from families and not being from
institutions and it not being state of origin led is a picture of inter country adoption that currently I do not recognise. Children come into the UK because they do not have the possibility of family life in other countries; maybe for young children there might be, older children not, but the picture that Baroness Nicholson or Nigel Cantwell painted is not one that I can actually agree with. **Chairman:** That is helpful. I am going to have to ask you to leave it there, I am afraid, but in thanking you very much can I say this. Though this is a narrow area of the Bill, we have indicated that we almost need a whole new draft bill on adoption. What I would ask you to do when you go away is to look at the Bill and see if there are specific things around it that you think ought to be in there that you want to draw our attention to, or anything that did not come up this morning that should have done, obviously tell us that too. If there is anything that in your view should be in the Bill around this fairly narrow area, please write in to us. Can I thank you all very much for your attendance.

---

**Supplementary Memorandum by Overseas Adoption Helpline**

**INTRODUCTION**

This supplementary memorandum is written further to our Memorandum of Evidence dated 28 February 2005 and to our oral evidence given to the Joint Committee on 3 March 2005.

We wish to expand on the contents of our written evidence, in particular in respect of sec 7 special circumstances and in respect of specialist agencies. We also wish to amend our comments on the difficulties which have emerged with implementation of the Adoption (Intercountry Aspects) Act 1999 and Adoption and Children Act 2002 in the light of the Adoption with a Foreign Element Regulations 2005, which were published on 2 March, but of which we had not had sight prior to giving evidence on 3 March 2005.

We have appended a copy of the DfES statistics by country of the number of applications received for adoption from overseas (from UK applicants) as we thought it would be of assistance to the Committee to have some appreciation of the numbers of intercountry adoption applications each year. It must be stressed that these do not necessary equate with the numbers of actual adoptions each year, of which there are no centrally held statistics so far as we know.

**S.7.3**

This section helpfully provides for adoption applications to a restricted country to be allowed to proceed in exceptional circumstances. However, the explanatory notes which accompany the Bill would appear only to envisage such exceptions in relation to specific identified children. We would wish to see this broadened to admit of the possibility of an adoption proceeding where a match had not yet been made, eg where the applicants had such strong links with the country concerned that they would only consider adoption from that country and no other and they can provide satisfactory guarantees that they can address the concerns behind the restrictions.

**Specialist Agencies**

This Bill provides a framework and process by which adoptions from a particular country are to be suspended if adoption practices in that country are such that continued adoptions from that country would be contrary to public policy. This legislation will, therefore, sit alongside the Adoption (Intercountry Aspects) Act 1999 and Adoption and Children Act 2002 in defining a comprehensive framework of safeguards in intercountry adoption.

The Committee asked through what channels might the Central Authority be assisted to gain information about practices in states of origin, and this was addressed.

Although it may be outside the scope of this Bill, there is an additional point to be made here. It concerns the desirability of pump priming monies to be made available to facilitate the setting up of specialist agencies which perform a linking or mediation function with the state of origin, and which exist in the vast majority of receiving states world-wide.
The existence of such agencies in England and Wales would result in a more child-protective system by which arrangements for adoption by UK applicants were made, as such agencies would be accredited by and accountable to the proper authorities in the state of origin as well as to the relevant central authority in the UK. A network of such agencies would also provide a mechanism by which the nature of adoption practices could be monitored continuously in situ in those states of origin in which these agencies were established.

Children Act 1989 S.56A as amended & Adoption & Children Act 2000 S.83

The DfES is aware of concerns within the adoption community about the loophole we identified in relation to the above, and which we set out in the first memorandum of evidence.

We recommend that a clause addressing this difficulty is introduced into this Bill, which would make it an offence for a person habitually resident in England and Wales to bring a child, or cause another person to bring a child, into the UK within a period of one year of the making of the overseas adoption order. We would also wish to see a period of common living with the child.

We are mindful, that there are circumstances where families habitually resident in the UK, living and working overseas, have no control over their next international posting whether that be a return to the UK, or elsewhere. We appreciate that without the provision for exceptions our proposals will cause difficulties for families who have adopted a child whilst living and working overseas and who have unexpectedly been returned to the UK within the proscribed period. It should, however, be possible to draft an exception clause which would both close the loophole about which we have concerns, whilst at the same time exempting adopters who have had no intention of circumventing the restrictions in place to safeguard the rights of the child and have adopted in the overseas country as part of their family life whilst residing and working there.

7. Time Periods That The Child Must Live With The Prospective Adopter Before An Order Can Be Made

7.1 There is concern about the specified time periods during which a child must live with adopters before an order can be made which it is felt are likely to run counter to the best interests of children. The problem time periods are as follows:

The UK as a State of Origin—time period for which the child to live with applicants.

Further to the arguments set out in our first memorandum, s. 86 of the Adoption and Children Act 2002 gives the power to modify through regulations 83 and 85 in respect of prospective adopters who are natural parents, natural relatives or guardians of the child, or one of them is. Whether or not these powers are used, the difficulty would remain in respect of applicants habitually resident outside the UK who are the placement of choice for a child but who do not are not birth parents, nor guardians, nor who, although they are birth relatives, are not relatives as defined within the act.

7.9 We recommend therefore that this Bill include provision to amend the current legislation to provide for the 10 weeks qualifying period to be waived when the best interests of the child require a shorter period of common living.

8. The UK as a Receiving State—Child to Live with Adopters Before Application

Our first memorandum referred the problems surround S. 42(5) of the Adoption and Children Act 2002 S.42(5) which provides that an application for an adoption order cannot be made in a case where the applicants have not complied with the requirement in regulations regarding prior home study reports etc. until the child has had his home with the applicants for three years, unless there is leave of the Court for an application to be made sooner.

We are delighted that The Adoptions with a Foreign Element Regulations 2005 s.9 (2)b have reduced the period of common living to 12 months. However, whereas the 1999 Act amended the 1976 Adoption Act to provide that, in non-compliant cases, an adoption order could not be made unless the child has had his or her home with the applicants for 12 months, the 2002 Act does not permit the application to be made until 12 months of common living has passed.

Court decisions in non-compliant cases have stressed that it is these cases above all which should come into the court arena and under judicial management at the earliest time so that matters of parental consent or other areas where there is an absence of information or clarity can be identified swiftly and appropriately investigated and resolved. If an application cannot be made until one year from placement has passed, it is
still possible that the child will by then have formed an attachment to the prospective adopter which would make it difficult to move the child without causing him or her considerable trauma.

We would, therefore, urge that the position remains as provided for now by 1999 Act’s amendment to the Adoption Act, namely that an early application can be lodged with the court at any time to allow that the court can institute the desired scrutiny of the background to the adoptive placement, and that an adoption order, rather than an adoption application, cannot be made until the child has his or her home with the applicants for 12 months.

March 2005

Adoption Statistics: Applications received by DfES by Country From 01/01/2004 to 31/12/2004

<table>
<thead>
<tr>
<th>Country</th>
<th>No of Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Armenia</td>
<td>1</td>
</tr>
<tr>
<td>Belarus</td>
<td>1</td>
</tr>
<tr>
<td>Brazil</td>
<td>1</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>1</td>
</tr>
<tr>
<td>Cambodia</td>
<td>18</td>
</tr>
<tr>
<td>Canada</td>
<td>1</td>
</tr>
<tr>
<td>China</td>
<td>162</td>
</tr>
<tr>
<td>Colombia</td>
<td>1</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>1</td>
</tr>
<tr>
<td>Georgia</td>
<td>1</td>
</tr>
<tr>
<td>Ghana</td>
<td>1</td>
</tr>
<tr>
<td>Guatemala</td>
<td>16</td>
</tr>
<tr>
<td>Guyana</td>
<td>1</td>
</tr>
<tr>
<td>India</td>
<td>26</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>2</td>
</tr>
<tr>
<td>Kenya</td>
<td>2</td>
</tr>
<tr>
<td>Morocco</td>
<td>1</td>
</tr>
<tr>
<td>Nepal</td>
<td>4</td>
</tr>
<tr>
<td>Nigeria</td>
<td>2</td>
</tr>
<tr>
<td>Pakistan</td>
<td>3</td>
</tr>
<tr>
<td>Peru</td>
<td>1</td>
</tr>
<tr>
<td>Philippines</td>
<td>5</td>
</tr>
<tr>
<td>Russia</td>
<td>40</td>
</tr>
<tr>
<td>South Africa</td>
<td>1</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>3</td>
</tr>
<tr>
<td>St Vincent</td>
<td>1</td>
</tr>
<tr>
<td>Thailand</td>
<td>11</td>
</tr>
<tr>
<td>Tunisia</td>
<td>1</td>
</tr>
<tr>
<td>Uganda</td>
<td>1</td>
</tr>
<tr>
<td>USA</td>
<td>13</td>
</tr>
<tr>
<td>Total Applications Received: 326</td>
<td></td>
</tr>
</tbody>
</table>

Source: DfES 10 January 2005

Memorandum by The Association of District Judges

SUMMARY

Whilst only 10 per cent of separating parents need to have recourse to the courts to resolve problems concerning contact with their children, some of those disputes will become intractable.

Whilst courts will always try to persuade parents that it is in the best interests of their children for disputes to be settled quickly and amicably whether by means of mediation or the intervention of Cafcass, there will be a proportion of cases which cannot be resolved and where contact will continue to present difficulties.
The Association supports the proposals made in the Draft Bill with regard to contact activities, contact activity directions, monitoring of contact activities, enforcement orders and the provision to order compensation for financial loss. The proposals are a reasonable, fair and proportionate response to the very real problems which, in a minority of cases, mar children’s ability to maintain a good relationship with both their parents after the parents have separated.

The proposals will only work if they are properly resourced. Before a contact activity direction can be made the necessary information meetings, classes, programmes, counselling or guidance sessions must be available and capable of being accessed quickly and cheaply. The operation of contact orders can only be monitored effectively if the necessary personnel are available. Cafcass must be properly funded and sufficient officers employed to ensure that not only can reports can be produced without delay, but that officers are available to monitor progress. Similarly the effectiveness of enforcement orders depends on suitable unpaid work projects being immediately available to ensure that enforcement orders are made, implemented and completed quickly.

Subject to the above provisos the proposals are workable.

**SUBMISSION**

1. The Association of District Judges represents all 418 District Judges of the County Courts in England and Wales. Prior to appointment as District Judges many had successful practices as lawyers in the field of family law, either as barristers or solicitors. Included in the Association’s membership, but not formally represented by the Association are 11 District Judges of the Principal Registry of the Family Division. The Association does not represent the District Judges (Magistrates Courts)

2. The district bench exercises a wide jurisdiction in the family justice system. In the area of private family law the district bench can hear all disputes relating to contact and residence.

3. District Judges deal with all undefended divorces and in all divorces deal with the division of the parties’ capital and income except for matters reserved by statute to the Child Support Agency. In the public law area of care work, specially trained district judges known as Nominated Care District Judges act in teams with the family care judge and case manage to trial those care cases being heard in the county court.

4. District Judge Millward, a Nominated Care District Judge, has chaired the Association’s Family Sub-committee since 2003. She sits at Maidstone County Court, which as a Family Hearing Centre has private law but not public law jurisdiction.

5. District Judge Taylor, a Nominated Care District Judge and Recorder sits at Leeds County Court which as a Care Centre has both public and private law jurisdiction.

6. “Parental Separation: Children’s Needs and Parent’s Responsibilities” was a paper from HM Government welcomed by the Association whose Response is to be found at Appendix A (Not printed).

7. “Draft Children (Contact) and Adoption Bill” is welcomed by the Association whose more detailed response is to be found at Appendix B.

8. “Responsibilities of Non Resident Parents” is a Paper prepared by the Association at the request of the DCA, Family Policy Division following the publication of the Draft Children (Contact) and Adoption Bill and is to be found at Appendix C. A copy was sent by the Family Policy Division to the Department for Education and Skills in connection with the revised Parenting Plans being drafted by that Department.

9. The Ministerial Foreword to the Consultation Paper “Parental Separation: Children’s Needs and Parents’ Responsibilities” suggested that the present system is not working well. The Association does not wholly agree. 90 per cent of separating parents are able to make satisfactory arrangements for their children without the need for intervention by the courts and the Paper records a high level of satisfaction with those arrangements by the parents who are able to reach agreement. Much credit must go to those couples experiencing a separation or divorce who are able to remember that they remain parents of their children and are able to communicate as such. The immense amount of work undertaken by solicitors in resolving potential contact disputes amicably and quickly must also be acknowledged. The courts are only therefore concerned with the remaining 10 per cent of parents who are unable to reach agreement.

10. Within that 10 per cent it is accepted that there are parents who will place considerable difficulties in the way of meaningful contact and others who will fail to engage in contact which it has been ordered should take place. The courts cannot prevent family and social discord; they can only deal with it when it happens. Often in that minority of relationships where a dispute about contact becomes intractable the relationships within the family are complex and events leading up to the separation or divorce have engendered bitterness and
11. The Association welcomes the proposals in the draft Bill including the proposed enforcement provisions and believes that they are necessary, appropriate and proportionate. They are probably sufficient given the sensitive nature of Children Act proceedings. Detailed points with regard to the drafting of the Bill are set out in the Association’s Response to the draft Bill at Appendix B. It will always be the case that in the first instance the courts will encourage both parents to maintain good contact with their children where it is safe for them to do so, and encourage settlement of contact disputes either by the use of mediation or with the assistance of a representative from Cafcass. The President’s Private Law Programme, recently published, sets out the framework for the conduct of cases involving children and specifically envisages early hearings, the encouragement of settlements and monitoring whether or not the contact orders made are working in practice.

12. Contact activities and contact activity directions. The facility to make such directions which, subject to the very important proviso that necessary local resources are in place, should assist parents in understanding their children’s needs with regard to contact and the effect which their behaviour is having on their children’s relationship with them. It is important that such contact activities are equally available for both parents since contact disputes are gender neutral and both may need assistance in coping with the separation.

13. Monitoring contact activities. The facility to require the progress of orders to be monitored is welcomed. Just as it is important that unresolved disputes are referred to the Court at an early date, it is equally important that if an order is not working for whatever reason, that fact should be reported to the court to enable the court to take appropriate action. However, such monitoring can only work effectively if there are sufficient resources made available to ensure both that there are sufficient officers of the Service to monitor the orders and that there are sufficient judicial resources to deal with cases where an order is breached with the necessary expedition.

14. Enforcement orders. Enforcement orders are a welcome addition to the courts’ powers to impose a penalty for breach of an order without reasonable excuse. The present sanctions for breach of an order are seldom satisfactory and thus rarely used. Any sanction for breach of an order must however be used sensitively, with caution and as a last resort. The scope for one parent to blame the other for the imposition of the sanction rather than accepting responsibility for the breach remains irrespective of the nature of the sanction. Whether the proposals are workable will depend upon the availability of suitable unpaid work within the local area. For an enforcement order to be effective it must be made and implemented quickly. Subject to that proviso an enforcement order will work by punishing the breach though it will not necessarily correct the behaviour which gave rise to the order being made. As the standard of proof within the Children Act is the civil standard of the balance of probabilities and the making of an enforcement order is the imposition of a penalty it should be made clear that the standard of proof is the criminal standard of being satisfied so as to be sure.

15. Compensation for financial loss. It is necessary fair and proportionate to enable the court to order a parent who has caused the other parent to suffer financial loss, whether eg by refusing to share travelling costs or refusing to permit a child to take a previously agreed, booked and paid for holiday, to pay compensation for that loss. Whether it is workable will depend on the financial resources of the particular parties and the ability of the person causing the financial loss to pay without adversely affecting the needs of the children. It is agreed that if compensation is ordered, it should not exceed the amount of the financial loss.

16. Adoptions with a foreign element. The district bench has no jurisdiction in these cases and accordingly cannot comment.

17. Schedule 1 It is preferable for any Act to form a self contained code which can be understood without reference to another statute. This is particularly important where it needs to be understood by a non lawyer which is increasingly likely as the number of unrepresented parties in children cases continues to rise.

18. In conclusion, the Association welcomes and supports the proposals made in the Bill subject to the necessary resources being made available for its proper implementation. In the absence of those resources the proposals will not work effectively.

District Judge Millward
Chair, Family Sub-committee of the Association of District Judges

February 2005
APPENDIX B

The Association of District Judges

DRAFT CHILDREN (CONTACT) AND ADOPTION BILL

RESPONSE

GENERAL

1. The Association welcomes the opportunity to comment on the draft Bill which it hopes will assist the Courts to help parents who encounter difficulties in remaining in contact with their children following separation or the breakdown of a relationship.

2. The Association shares the Government’s belief that both parents should continue to have a meaningful relationship with their children following separation so long as it is safe and in the children’s best interests for them to do so, and supports the proposed initiatives to encourage parents to accept their continuing responsibilities to their children after separation.

3. The Association accepts that in a minority of cases the present system does not meet the needs of either the separating parents or their children. However, many separating parents are able to make their own arrangements and it should be noted that it is only a small percentage of the 10 per cent of cases which come to court for questions relating to children to be resolved which give rise to intractable disputes, the majority being capable of either negotiated settlement or an order which the parents find acceptable and with which they comply.

4. In general terms the Association welcomes the proposals in the draft Bill to include powers for courts to refer parents to programmes, classes or information sessions before a contact order is made or at any other stage in the proceedings and the other proposals for monitoring contact activities, enforcement and payment of compensation for financial loss. Apart from the drafting points which are set out in some detail below, the Association’s concerns about the practicality of the proposals centre on the availability of the necessary programmes and classes, their funding and the availability of suitable projects for community based orders.

5. If the proposals are to work, the necessary classes, programmes and information sessions must be freely, readily and locally available. They must be accessible to parents and others eg grandparents, and new partners who are involved in the upbringing of the child. We believe that such classes, programmes and information sessions should be free at the point of delivery to encourage compliance with any contact activity direction. Whilst it is unclear whether it is intended that the classes etc are to be provided by Cafcass, the local authority or the voluntary sector, adequate funding for the provision of the classes, and their continuation once established must be made available. It is essential that any contact activity direction is implemented without delay.

6. In many areas the services provided by Cafcass are already under severe strain and there are unacceptably long delays in obtaining reports. Until Cafcass is properly resourced and fully and properly staffed it seems likely that such delays will continue. Early intervention by Cafcass is needed but, at present, is not generally available. Once a contact order has been made, the essence of the proposal that progress should be monitored is to ensure that problems are referred back to court as soon as they occur and that court time is found at short notice to review the order and deal with any breach.

7. The judiciary already have to fit emergency applications relating to both family and civil matters into packed lists on a daily basis and consideration needs to be given, in conjunction with any unified family justice system, to the provision of adequate judicial resources to ensure that urgent applications can be dealt with expeditiously.

8. We believe the success or failure of the Bill, if enacted, to resolve the difficulties surrounding intractable contact disputes will depend directly on the adequacy of available resources. There are very considerable funding implications in setting up and maintaining sufficient and suitable contact activity facilities in each area and in the provisions for monitoring contact and returning matters to court at short notice.

9. We also welcome the Guidance issued by the President of the Family Division in respect of The Private Law Programme and the concept of a unified family court which, if properly resourced, should enable cases concerning children to be heard more quickly and at the appropriate level. Early intervention by Cafcass may prevent disputes becoming intractable and it will certainly be of considerable assistance to parents, their children and the courts for the effectiveness of contact orders to be monitored and problems referred back to the court as quickly as possible.
10. The difficulties encountered by some children in enjoying good, lasting and consistent contact with both their parents after the breakdown of the parental relationship are well known. At present such sanctions as exist to enforce compliance by parents with contact orders are seldom used since it is rarely likely to be in the best interests of the child for a parent to be imprisoned and financial resources may be such that the imposition of a fine is impractical. The longer term effect of the use of such sanctions cannot be ignored. There is considerable danger that a parent, implacably hostile to a child having contact with the other parent, is likely if imprisoned or fined for breach of a Court order to blame the other parent for the punishment, rather than acknowledging their own default, and use it as a further means of turning the child away from the absent parent.

11. A significant proportion of separated parents lose contact with their children within approximately two years of separation. We welcome the proposal to introduce written parenting plans and hope that a requirement to address all issues concerning the future welfare of the children at an early stage may lead to a greater recognition of the responsibilities both parents have towards their children and avoid some of the arguments about minor matters which currently take place.

12. Problems surrounding child contact are gender neutral. Whilst it is often the case that children live with their mother and are denied contact with their father, our experience is that mirror problems exist where the children live with their father. There are certainly fathers who take the view that a mother who leaves her children, for whatever reason, should be regarded as having abandoned them and denied future contact. Even greater problems can occur where the natural parents have left children to be cared for by other family members including grandparents. Such sanctions as are to be created to ensure compliance with a contact order by a resident parent must apply irrespective of the sex of that parent.

**PART 1**

*Contact with children*

Clause I Contact activities

Section 11A Contact activity directions

13.(b) We do not consider that the section should apply only when the order is opposed. It will not infrequently be the case that a resident parent will profess not to oppose an order, alleging that it is the child who is unwilling to maintain contact. Whilst in some cases that will be true in others it will be the parent who is putting obstacles in the way of contact or influencing the child against contact and we believe it would be more effective to let the court exercise its discretion in all cases.

14.(6) As the purpose of the direction is to prepare the way for successful contact, there seems to be no reason why the court’s power to give a direction should be confined to a parent. Attendance at an activity may be just as beneficial in a case where a child is living, for example with a member of the family who opposes contact as one where the child is living with a parent. In contrast a contact activity condition can be made in respect of any carer who is a party to the proceedings (see section 11B (4). No purpose is served by differentiating between the two.

Section 11B Contact activity condition

15. Subsection (2) (c) is meaningless. A contact order can only be made in favour of a person (see section 8(1)). Any meaning it does have is impossible to ascertain.

Section 11C Sections 11A and 11B further provision

16. Subsection 5(a) refers to the “area in which a person who would be subject to the order resides.” This is imprecise. It should be amended, for example, to read “in the area of the local authority in which the person who would be subject to the order resides”. (This wording is based on s 31 (8) of the Children Act 1989.) Alternatively, the proviso can be omitted altogether. What is important is that it is reasonable to expect the named person to travel to the activity. Subsection (5) could therefore be amended to read:

(5) The third matter is that the contact activity proposed to be specified is provided in a place to which the person who would be subject to the order can reasonably be expected to travel.

17. Subsection (7) (b) should be amended to include after “an educational establishment”: or attends a place of worship. This is particularly important as activities may be provided on a Saturday. Ordering attendance may interfere with the practice of a religion without conflicting with religious beliefs.

**11D Monitoring contact activities**
18. Although a court will be able to require CAFCASS to monitor compliance with directions and conditions, no sanction is provided for non-compliance. It might be possible to argue that breach of a condition amounts to breach of a contact order whereby engaging s 11F but it would be advisable to avoid doubt by expressly providing that a breach of this condition is to be treated as breach of an order. For reasons of proportionality it is important to distinguish between a breach of a contact activity condition which would attract a sanction and breaches of other conditions imposed under s 11, for example that the child is returned promptly at the end of contact which would not. In the later cases if a court thought that a sanction was required, the condition could be redrafted as an order.

19. In any event as the Bill is presently drafted it would be impossible to argue that breach of a direction can be enforced under s 11F.

20. It is important that directions and contact conditions are effective, particularly where a resident parent or carer is opposed to contact. Although attempts at persuasion will be a matter of first resort, a power to make enforcement orders will be required.

Section 11E Contact activities

21. In order to be effective, a contact activity is likely to have to extend over a period of time. However as the Bill is presently drafted, a party directed to take part in a contact activity will have to attend only one information, guidance or counselling session unless the Interpretation Act 1978 can be used to interpret the words as “one or more sessions.” In contrast, taking part “in a programme” denotes more than one session. So far as possible, the Children Act 1989 as amended needs to be easily understood by someone who lacks legal advice. Ambiguity and having to refer to other legislation especially if it is not mentioned in the text ought to be avoided. We suggest therefore that section 11E (1) should be amended to read:

(1) A person takes part in a contact activity if—
(a) he attends one or more information sessions; or
(b) he takes part in a programme or attends one or more class, counselling or guidance session or other activity falling within subsection (3).

22. This proposed amendment does not deal with the problem of how many sessions should be attended and over what period of time. Directing a person to take part in a programme engages his Article 8 rights under the Human Rights Act and has to be reasonable and proportionate. A power to give such a direction needs to be set out clearly. Furthermore, giving a direction will cause significant delay to the final resolution of a contact dispute unless compliance is required within a relatively short period.

23. We suggest therefore that a new subsection is inserted:

(4) Any direction given under section 11A or condition imposed under section 11B shall be limited in time and shall not require a party to take part in a programme or to attend a class, session or other activity on more than [six] occasions or for a period of more than [three] months.

Clause 3 Enforcement orders

Section 11G

24. Making an enforcement order is imposing a penalty and accordingly the criminal standard of proof applies. While we recognise that technically the clause “If the court is satisfied” does not exclude such a standard, “is satisfied” is also used in the Children Act 1989 to refer to the civil standard (see, for example s 31(2) “A court may only make a care order or supervision order if it is satisfied”). One rule of interpretation is that identical words or phrases in the same legislation are presumed to have the same meaning. We recommend that to avoid doubt the point is put beyond doubt. We suggest therefore that the clause is amended to read: “If the court is satisfied so as to be sure”.

25. Subsection 11G (5) states that an enforcement order can be made in respect of each breach. An amendment is needed to make clear whether consecutive curfew requirements can be imposed and whether there is a total maximum number of hours of unpaid work or days of curfew which can be imposed.

26. We are concerned that the period for completion of the unpaid work is as great as 12 months (see s 200(2) of the Criminal Justice Act 2003). The primary purpose of enforcement orders must be to ensure that contact takes place. It will have been ordered because it is in the best interests of the child. The problems caused by delay in enforcing contact and the ability of the opposing parent to adopt delaying tactics is amply demonstrated by cases such as Re M (intractable contact, interim care order) [2003] 2 FLR 636. In Re D (a child) (intractable contact dispute) [2004] 1FLR 1227 Mr Justice Munby stressed the importance of tackling breaches at once and this has been underlined by the President’s Private Law Programme. If an enforcement
order is to be effective, it must be made quickly and, if it is not to be suspended, must be implemented quickly. Any work requirement should be completed in no more than three months.

Section 11H Enforcement orders: further provision

27. Subsection 11H (3) needs to be amended in the same way as s 11C (7)(b) by adding the words “or attends a place of worship”.

Clause 4 Compensation for financial loss

Section 11 I

28. An order should be made under this section as compensation for a party who has suffered loss and not as a penalty. The clause “if a court is satisfied” in subsection 11I (4) needs to be interpreted as requiring the civil standard of proof. If the amendments suggested to s11G are made, this subsection does not need to be amended. If however the amendments are not made, it needs to be made clear in s 11 I (4) that the standard is the civil standard.

29. Subsection 11I (8) states that an amount ordered to be paid may be recovered “as a civil debt”. It is unclear whether this means that a compensation order can be enforced at once or whether a claim will need to be instituted to obtain judgment before enforcement can take place. The first is obviously preferable. There is precedence for orders by a non-civil court or tribunal eg an order for the payment of council tax or an award by an employment tribunal, being enforced in the county court. We suggest that subsection 11 I (8) is amended to read:

An amount ordered to be paid as compensation may be enforced in the county court by the applicant as a civil debt.

PART 2

Adoptions with a foreign element

30. The Association responded briefly to on the original consultation paper but as the district bench outside the Principal Registry of the family Division does not have jurisdiction to hear such applications, we propose to make no comment on this section of the draft Bill except to say that section (6) is not well drafted. Subsection 6(2)(b) is particularly unattractive. If the whole section is not to be redrafted we suggest the following amendment to the subsection:

(b) has adopted a child under the law of another country and wishes to bring or cause another to bring that child into the United Kingdom within a period of no more than six months beginning with the date of the adoption and ending with the date when it is intended that the child should be brought into the United Kingdom.

Schedule 1

31. So far as is possible, an Act should form a self-contained code which can be understood without reference to another statute. This is especially important where it needs to be understood by a non-lawyer. It is likely that the proportion of unrepresented parties in children cases will continue to increase. We recommend therefore that the proposed new schedule should be redrafted to exclude reference to the Criminal Justice Act 2003 and to set out all relevant provisions in their entirety. In the alternative those provisions could be set out in full in the Explanatory Memorandum.

32. The schedule states that if an enforcement order is breached, another enforcement order may be made. In intractable cases this will not be enough. An enforcement order by definition can be imposed only if an order has already been breached. To limit enforcement of an enforcement order in the way proposed is to invite a third breach of an order. Moreover, additional delay will be caused. Whilst the Association recognises that committal must always be a matter of last resort it recommends that a breach of an enforcement order may be punished by a further enforcement order or a fine or committal. Fines and committal are available to punish a breach of a contact order. It is illogical therefore to exclude them from sanctions for breaching an enforcement order.

33. Consequential amendments to the Civil Procedure Rules 1998 will be required.

28 February 2005
Examination of Witnesses

Witnesses: District Judge John Taylor and District Judge Michael Walker, Association of Districts Judges, examined

Q236 Chairman: Can I welcome you both. I think, Mr Walker, you have suddenly stepped in at short notice?

District Judge Walker: Yes, I apologise. District Judge Millward telephoned me at 8.00 this morning to say that Maidstone was a mere 35 miles from here but on another planet and she was totally unable to leave her front door.

Q237 Chairman: I understand you are a District Judge, but I am not quite sure where?

District Judge Walker: District Judge Millward, she is from Maidstone.

Q238 Chairman: No, yourself.

District Judge Walker: I am from Wandsworth, and I am Secretary of the Association of District Judges.

Q239 Chairman: Judge Walker, you are a District Judge from Leeds. Is that right?

District Judge Taylor: Yes, that is right, Chairman.

Chairman: Thank you very much and thank you for your attendance today.

Q240 Baroness Howarth of Breckland: As you know, we are ploughing through several issues around this Bill. I wonder if you could start by talking about how effective in your experience have in-court conciliation schemes been in assisting parents to reach agreement over contact issues?

District Judge Taylor: Yes. There is about to be implemented in the Leeds group of courts a new system which is following the initiative set up by the President of the Family Division, which will involve the parties coming into the judge’s chambers with their legal representatives, if they have them, and the officer from CAFCASS will be in our chambers with us and we will see the parties and identify the issues at the outset. Before what used to happen was that they would see the CAFCASS officer first, and sometimes we found that that led to issues becoming too clearly defined and people sticking to their respective positions; whereas if they come before us we can identify what the issues are and, if necessary and appropriate, give guidance as to perhaps the way the case ought to be proceeding and then direct them to go out with the CAFCASS officer and discuss those particular issues; but we have narrowed the issues to what we think are the relevant points in the case, bearing in mind, of course, what is best for the children.

Q241 Baroness Howarth of Breckland: What do you think the difficulties are going to be about implementing that new scheme, if any?

District Judge Taylor: The availability of CAFCASS officers. We are finding that in some areas, I am told, and this is what I am told only, that York, for example, has difficulty in having CAFCASS officers available to man that scheme. Certainly so far as Leeds is concerned, we think we will have sufficient, or we hope so, but we will have to see how it goes, but we are told that manning the scheme can be a problem. It is down to funding, I am afraid, for CAFCASS.

Q242 Baroness Howarth of Breckland: You probably know I am Deputy Chair of CAFCASS?

District Judge Taylor: Yes.

Q243 Baroness Howarth of Breckland: To follow through on that, a lot of work is done at the moment by CAFCASS officers, indeed, before they reach the court at all in some cases. Do you think that work should be expanded, that preventative work, at the early stages?

District Judge Taylor: I am not aware, in my area, at any rate, of a great deal of work being done before a case reaches the courts. We find that it tends to happen afterwards. What is available in my area is mediation for those people that take it up, but the take-up rate is not always very high. I ought to declare that I am also the Chair of West Yorkshire Family Mediation Service, of the Board of Trustees, so I have some knowledge of how mediation works as well and the difficulties that that there are.

Q244 Baroness Howarth of Breckland: As you have moved on to mediation, let me ask you about that so that I can get this bit over. Mediation is incredibly important.

District Judge Taylor: Yes.

Q245 Baroness Howarth of Breckland: It does appear sometimes that the Government may or may not have set its face against it, in that it is not mentioned in the legislation in any way?

District Judge Taylor: Yes.

Q246 Baroness Howarth of Breckland: Do you think that there should be more work and that the legislation should reflect that in relation to mediation? There is a debate about whether mediation should be enforced, or not enforced, or at what stage the judge says to someone, “You must meet with a mediator”. Could you talk a little bit about that?

District Judge Taylor: To try and deal with those in order, I think, I hope, first of all, mediation is not applicable or appropriate in every case, and that can
be for the reason, for example, that you get an imbalance between the parties. You may have one party who is more dominant and strong and in the mediation session the mediator tries to facilitate an agreement between the parties, but if one party is weaker they may agree to something that is not perhaps in the child’s interests or their interests or is not going to be sustainable in the long run. I am not so sure that enforcing mediation would be perhaps appropriate, but I think it would be appropriate for the court to be able to say that the parties should meet to see if mediation is going to be suitable and appropriate.

**District Judge Walker:** I would agree entirely with what Judge Taylor has said but, just to put a slight gloss on it in terms of compulsion or not, I think it would be entirely right for a judge to have the ability to order parties to go to an information meeting. But I step back from saying it would be appropriate to order them to go to a mediation meeting, for the reasons John has stated. Sometimes it would not be appropriate and I think there is a fundamental contradiction in ordering someone to go and have a discussion. If they are not going to have it, they are not going to have it. I think we ought to have the power to order them to go to an information meeting.

**Q247 Ann Coffey:** This Bill, of course, is really to do with legal process and how sanctions within the law can be used to facilitate contact. The Department of Constitutional Affairs published a profile of applicants and respondents in contact cases in Essex, very much saying that the problems that arise actually arise very soon after the parents separate. Indeed, you have just mentioned that before you see them very little has been done. What do you think could be done to support this Bill, although obviously it is very difficult to write it in, in opening up the possibility of much earlier interventions in a more informal setting, for example, in a new children centre or maybe an enhanced role for CAFCASS as a hotline for anybody with a problem?.

**District Judge Taylor:** Bearing in mind, as we have said in our paper, that probably 90 per cent of parents who separate resolve their difficulties without coming before the court at all, we are talking about a relative minority of 10 per cent, and of that 10 per cent, I suppose if facilities are available for them to go to parent awareness classes, or whatever you like to call it, something of that nature, that may well be of assistance; although, from my experience of the cases that come before the court, given the attitude of the parties, the difficulties that have arisen and so forth, it may be that at the end of the day it does need somebody independent like a court with, if necessary, powers to make orders, to actually do anything effectively about it.

**District Judge Walker:** The resource implications are huge, obviously, because if parties separate today on a Thursday, one of the parents would quite easily want contact on Saturday and there is no time for us to be involved in that process and no time to make appointments with other agencies either. The work has to have been done beforehand by people like Relate, or even by schools and citizenship programmes and things like that, which is hugely resource intensive.

**Q248 Baroness Gould of Potternewton:** One of the things that has been discussed in the Constitutional Affairs Committee Report which has been published today, is that there is a feeling that one of the factors for dissatisfaction is the lack of openness of the courts and that all of this is happening behind closed doors. I wonder whether we could have your views on whether this would be helped if in fact the press and the public, under certain appropriate reporting restrictions, were actually allowed into the courts? How would that balance between family confidentiality and openness?

**District Judge Walker:** It is a rather odd situation, because when evidence was being given to the Constitutional Affairs Select Committee what we discovered was that in the Magistrates Court this power exists at the moment. We, therefore, on 1 April, with the introduction of Her Majesty’s Courts Service, have the interesting situation that what is possible in the Magistrates Court will not possible in the High Court or the County Court, and I think therefore the President recognises that the situation needs to be resolved. In the Magistrates Courts they use the power infrequently, but they do let the public in and there are obviously restrictions on the reporting of names and children’s identities need obviously to be protected, but it appears to work in the cases where it is used. I think we have a problem at the moment that we are not seen to be an open justice system. We need to be more open.

**District Judge Taylor:** The only thing I would add to that is that if any decision is to be made on that, the question which should be borne in mind is is it really in the children’s interests if members of the public are to be allowed into the proceedings? There is a balancing exercise, I think. That would be my concern.

**Q249 Baroness Gould of Potternewton:** Who would determine that? How would it be determined that it would be in the children’s interests, for instance, for you to do it behind closed doors?

**District Judge Taylor:** I suppose in any individual case it could be for the judge to decide after hearing representations by the parties. The parties may not
have any particular concerns, but if a child knows, for example, that his or her case is being discussed at court that day, the child may not think that there is sufficient thought to their concerns. They may not want it to be discussed. Their friends may get to know about it at school.

Q250 **Chairman:** The argument is partly that it happens in other countries and also that it can demystify the process to some degree, which can generally be beneficial. You presumably heard that argument.

*District Judge Taylor:* Yes.

Q251 **Chairman:** Are you content with it?

*District Judge Walker:* I agree with it entirely. To be honest, there is a mistake just to see it in terms of a public/private divide as well. There is the situation in the middle where there is the extended family involved in the situation, and very often one is aware that they are all at court in the waiting room outside. There is a lot to be said, very often, when you get to the point of giving your judgment, of getting them all into court so they hear first hand what you are saying and they do not get it second or third hand from sometimes a malcontent member of the family.

Q252 **Baroness Howarth of Breckland:** Is there a difference between those people who the child knows being admitted in an open way into the court and a band of strangers who come to court. I have sat in criminal cases at a time when young people had to appear in the dock giving evidence in abuse cases, and we have moved away from that now. We have now ensured that the child is protected from all that. Do you not think that in these kinds of cases the child’s interest is not best served by making sure that they know who the people are who are listening to their case about their lives and that there are not a lot of strangers sitting around as well? When I go into court the judges are very careful about explaining that.

*District Judge Walker:* The oddity about it actually is that the child is probably the one person who is not at court anyway.

Q253 **Baroness Howarth of Breckland:** Sometimes they are?

*District Judge Walker:* Sometimes, but not normally. It depends who wants to come in. If a complete stranger said, “I want to come in, please, and sit in on the case”, I would certainly want to know why before I would say yes. It might be for a very good reason. He might say, “I have got my case coming up next week and I would like to see what happens.”

Q254 **Chairman:** I think we have to leave it. This is not in this Bill and, in a way, I think we are being led by the Constitutional Affairs Committee report, of which I am a member too. Before we move on to enforcement can I ask you to clarify two things. On the mediation point, you are actually saying that nothing has been written into the Bill to make that happen. You are saying that it depends on other practices supporting that approach. Is that what you are saying?

*District Judge Walker:* Yes.

Q255 **Chairman:** Are you saying something could be written into this draft Bill that could almost increase the chances of it happening?

*District Judge Walker:* No, I do not think I am saying that. At the moment there is scope, obviously, to refer parties to mediation, and that very often happens. Where they are perhaps a little reluctant or need some explanation, to have the power to refer them to an information meeting when it is then explained to them in more detail is useful, but, as I have said already, I step back from saying that we should have the power directly to refer them to mediation.

Q256 **Chairman:** You are of a similar view?

*District Judge Taylor:* Yes.

Q257 **Chairman:** The other thing I want clarification on is this question of whether it words should go in about the importance of sustaining a relationship between the child and the non-resident parent. You are not in favour of putting that in the Bill. Is that right?

*District Judge Taylor:* It is already taken into consideration in the welfare check-list. It is one of those things that we nominally, or very importantly, take into account. On a separate point, one of the things that is of concern to us is that in new section 11A(1)(b) it says that we have powers where the making of the order is opposed. The difficulty with that is that if the order is only opposed notionally, in fact, we may have difficulty in considering enforcing that there is contact to take place because a parent may come to court and say, “I do not oppose contact”, but in fact in reality they do. Or you may get a parent who comes to court and says, “My husband does not really want to see the children. He is not doing anything about it.” It is not opposed, but the husband is not turning up every week or sticking to the arrangements or whatever. The power of the court to be able to make one of the orders under the Bill, even if the order is not opposed, we think would be appropriate.

**Chairman:** Can I refer to enforcement now. Jonathan.
Q258 Jonathan Shaw: We have heard frequently from various witnesses about the provisions that are available to you at the moment, and I think Dame Elizabeth Butler-Sloss said to us that no-one involved in these cases has ever got any money and prison is really not used frequently for the reasons we understand. In your area, Judge Taylor, is that the situation?

District Judge Taylor: It is very rare in my experience for enforcement to be dealt with by way of people being sent to prison. What I have known happen, again not terribly often but it has happened, is where residence has been transferred from one parent to the other where that has been appropriate, bearing in mind the welfare check list and the interests of the child.

Q259 Jonathan Shaw: Have you sent anyone to prison?

District Judge Taylor: Not for that, no.

Q260 Jonathan Shaw: I am sure you have sent people to prison in other types of cases. In what circumstances would you in a contact case?

District Judge Taylor: Send them to prison.

Q261 Jonathan Shaw: Yes.

District Judge Taylor: Can I say that I would regard that as the ultimate sanction and the ultimate end of the line so far as enforcing law is concerned. My practice, and I believe that of my colleagues, is to try and get the parties to co-operate, and that has been one of the purposes of the meetings that we have. When the parties first come before us from next month with the CAFCASS officer, we find out what the issues are and try and get contact moving on some level; and usually the person who is reluctant to contact will agree to something, and we get that working and build on that, and it is often a carrot and stick approach. At the moment the problem that we have had is that, apart from being able to say prison or transferring residence, which is not always appropriate, we have not been able to say anything else, but if we can hint at anything else or refer them and remind their solicitors of what powers we have, they may be persuaded that it would be a good idea to co-operate. It is really there as an ultimate sanction-either to send them to prison or use any of the other facilities that are proposed in the Bill. That we would see as beneficial.

Q262 Jonathan Shaw: Tell us what you think about the provisions in the Bill in terms of the menu of options that you and your colleagues will have available to you?

District Judge Taylor: By and large, we support them, and I think we have said in our paper, our response, and some of the comments I am making are really tweaking. There has been a suggestion, I understand, that in relation to the power to send to prison we would have power for intermittent custody, where they went in for, say, the weekend, or whatever, when perhaps if it was a father having contact over the weekend, the mother goes into custody over the week. That would be welcome.

Q263 Chairman: Very disruptive for the prison service.

District Judge Taylor: Not welcome for the prison service, but if that facility was available, or a power to suspend a prison sentence, a short period of imprisonment suspended may enable a parent to step back and think, “Do I really want to do that. The next step is now up to me, and I do not want to go down that line”, and therefore it may be effective.

Q264 Jonathan Shaw: Under what circumstances might you consider where a contact order has been breached, “Right, you are now going to clean up graffiti in the local subway in Leeds”? What sort of circumstances?

District Judge Taylor: What sort of situation?

Q265 Jonathan Shaw: Yes.

District Judge Taylor: It is difficult to say in the cold light of day. It would depend on the circumstances of the case that comes before us, but I would imagine it would be where there has been persistent breach of an order, somebody just not complying at all. You would have to have regard to the person’s circumstances, whether it was really appropriate for them to clean up in the subway or whatever they were going to do, when they could do it, and how it would impinge on their lifestyle, and what other children they have to support.

District Judge Walker: Can I say as well, I think all of us would want to be satisfied that the contact order had been breached to a criminal standard rather than a civil standard. The Bill is silent on the standard of proof.

Q266 Vera Baird: My colleague has asked you when you might use the power to make somebody clean graffiti up in the subway. Is that the kind of unpaid work that you think would be appropriate to try to enforce contact orders or contact-related activities? Would you have any better suggestions? Might it be sensible, for instance, to engage such people in work with children?

District Judge Taylor: Perhaps to work at a contact centre as an unpaid helper, or something of that kind?
Q267 Vera Baird: Yes
District Judge Taylor: It may be something that would be appropriate as an option, but I can think of other alternatives that I think would be preferable.

Q268 Chairman: I interpret that you want just flexibility?
District Judge Taylor: Yes.

Q269 Chairman: If you go down that road of a community service order you really want to be able to decide what it might be?
District Judge Taylor: Yes, for example helping in a waiting area at a hospital serving tea, or something like that. It would have to be appropriate.

Q270 Vera Baird: Something that is relevant to the order you are trying to enforce in a way?
District Judge Taylor: Yes.

Q271 Vera Baird: It is not intended to be punitive nor is it intended to carry the message that community service is intended to carry for young kids: go and pay something back to the community. That is not the situation is it?
District Judge Taylor: At the end of any period of community service presumably one is hoping that there is still contact taking place, and if you create too big a division, too big a wedge, then you have defeated the object of what you have been trying to achieve. That is why, as I was saying earlier, and so far as I am concerned I think my colleagues would take the same view, the enforcement procedures are a last resort. They are important to be there because I think they will add impetus and strength to the orders that we do make and it will give us added teeth, but hopefully we shall not have to implement them very often.
District Judge Walker: Just to emphasise, the problem of course with imprisonment, community service or anything is that at the end of it you do not draw a line under it as if it was a criminal offence; mum and dad are still having a relationship. You get a standard type of reporting. That is no different formula of report in certain cases, a much manipulated by both sides. Albeit you would wish to have the threat of the penalty coming from the court, nonetheless it would have to be initiated by the other party, making the point that the contact order had been broken, and that is eminently manipulable, is it not?
District Judge Taylor: Unless the CAFCASS officer who was reviewing the order, keeping it under review, brought it back of their own volition, which I think is probably envisaged in the Bill. Can I say on enforcement, the one area that perhaps we are less happy about is electronic tagging: because there is a cost implication. It is perhaps more readily associated with criminal offences, and whilst we say that the standard of proof should be the same as a criminal for enforcement, also it gives the opportunity for the parent who has to wear this contraption to say to the child, “Look what I have got to wear as result of...” So I think we would for our sake we would withdraw that.

Q273 Chairman: You would be opposed to that one?
District Judge Taylor: Yes.

Q274 Baroness Howarth of Breckland: On the point Mr Walker made about the Bill being silent on the standards of proof, I just wondered what you would like us to do and what you would like to see?
District Judge Walker: I think in our response we have made the technical point about how we think the Bill can be amended. It just needs a few more words to ensure effectively that it is to a criminal standard but not using that precise formula of words. To be honest, I forget what we have said two weeks ago.
District Judge Taylor: I think the formula is “so that the court is sure”.

Q275 Chairman: You could send us that if you wanted to suggest a formula of words.
District Judge Walker: I think that is enough.

Q276 Jonathan Shaw: There is going to be a new way for CAFCASS officers to work in terms of the monitoring of enforcement orders, but are you going to expect the same level of report writing that you receive now?
District Judge Taylor: No. At the moment reports that are provided in so far as private cases are concerned tend to be the one size fits all category. You get a standard type of reporting. That is no criticism of CAFCASS, it is what they think we need, and they cover certain criteria and set it out in a quite lengthy report. What we are hoping to do — this is the aim — is with a new process where the CAFCASS officer sits in with us, we identify the issues, we send the parties out, if necessary, to talk to the CAFCASS officer for half an hour, they then come back to us and we see what progress has been made. Hopefully we will reduce the need for reports in a lot of cases. We hope that the need for reports will be much reduced. It may be appropriate, and this is perhaps something for discussion between the courts and the local CAFCASS officers, to agree a different formula of report in certain cases, a much
shorter report just to deal with a specific issue, and to that extent the need for those reports that previously have been provided in a lot of cases would have been reduced. Going back twenty years when I was in practice and dealing with cases, the first thing you would do when you went to court on a dispute over children would be you would go before the magistrates or the judge and a report would be ordered. That happened straight away. That does not happen as much now, and the process at the President’s initiatives being put into force this year should hopefully take is that further down the road it should make the cases needing reports less, fewer contested hearings, and that certainly would be our aim.

Q277 Jonathan Shaw: So what District Judges want to see is a reduction in the amount of time that CAFCASS officers are spending on reports and more time working with families?
District Judge Walker: Absolutely.

Q278 Jonathan Shaw: Freeing that time up?
District Judge Taylor: We would hope so, yes.
Jonathan Shaw: Thank you.

Q279 Chairman: A key part of that is you indicated that you could be asked to intervene at key times in order to facilitate the liaison process?
District Judge Taylor: Yes.
District Judge Walker: This is a classic sort of situation. You have a family and mother says, “The child does not want to see dad”, and the child is eight or 11, or whatever. It is useful to have CAFCASS see the child and report. Of course at the moment that is then encapsulated with a much wider report which tells you everything else as well, which is all interesting information but not helpful to the particular case.
District Judge Taylor: Can I add that there may be the odd case, and it is the case of probable implacable hostility, where there will be a need for a slightly lengthier report than we get now, but those cases will be very few and far between.

Q280 Ann Coffey: In schedule 1(3) of the draft Bill there is a provision for the court to make orders if the person fails to comply with an enforcement order. The court’s powers appear to be limited to amending the first order to make it more onerous or making a fresh enforcement order. Do you think this is sufficient, or do you think the court should have the power to commit to prison for breach of the enforcement order?
District Judge Walker: I am not quite sure I even understand what it means, to be honest. I think one needs to have a range of sanctions and, if you are imposing sanctions, each sanction should be more severe than the one you imposed the previous time.

Q281 Ann Coffey: But we do not know what breaking or onerous means.
District Judge Walker: I am not sure what it means, no. It ought to have been tightly drafted in the first place.
Chairman: Perhaps we will get the drafter to look at that again.

Q282 Vera Baird: In the new model that you are talking about, where would you find out if there is an allegation of domestic violence?
District Judge Taylor: That would usually be identified at the very first hearing where the parties would tell you what the issues are.

Q283 Vera Baird: But is that always the best way to facilitate what is known to be a difficult thing for, predominantly, women to talk about by having all the parties there?
District Judge Walker: If I may say so, that is when CAFCASS are so very helpful at initial appointments, because very often they can spend half an hour or more with the parties, will come back and say to you privately before the parties come back, “Sir, there is a problem here, there is a serious problem, and it is obvious”, and they tell that you what it is, and they are very, very astute at picking that up at a very early stage. The Mother herself, of course, may say nothing to you, but CAFCASS are very astute at picking it up.
District Judge Taylor: It will often be on the form that is submitted. There will be a form that is submitted, the application under the Children Act which brings the case before the court in the first instance, so it would be set out on there and the response from the parent who is opposing contact, let’s say, because of domestic violence will put it on that form, so that will be before the judge before he or she sees the parties.
Chairman: Mr MacFarlane says that there is a new form under the Children Act that has come in since 31 January where the applicant has to answer a whole series of questions about possible violence, and a blank copy of that is sent to the respondent. We will leave it there. We will have to revisit that in due course.

Q284 Baroness Gould of Potternewton: The Government has predicted in the Green Paper for parental separation that the package of measures that they detail in that report will reduce or could possibly reduce the cases by about 60 per cent, the figure they give, and the number of applications would fall from 40,000 to 16,000 applications. Do you believe that actually that would be the case,
and, as a consequence of the Government believing that, they say that the implementation of the case would be resource neutral. First of all, do you think that is the case, and, if so, would it be resource neutral?

District Judge Walker: I think many of us approach the Government’s statistics with a certain degree of scepticism. I am not at all sure. To be honest, we really do not know. It is a hearts and minds, or carrot and stick, situation. We do not know whether, if we have got greater powers of enforcement, it may mean that at large people may behave more reasonably and cases do not come to court. On the other hand, it may well be that a lot more cases will come. One thing I am aware of is that one third of fathers cease all contact within the first two years of separation. There is a whole variety of reasons why that happens, but I think a good number are because they experience difficulties with contact and they just give up. If they see that the courts have got greater powers and are going to be more minded to make sure that contact does occur where we believe it should occur, then they may come back into the system that they at the moment have opted out of, so numbers may go up. I really do not know. It is not just the cases though. There are many other things. There are information meetings, mediation meetings, enforcement, imprisonment. It is all heavily resource intensive.

Q285 Baroness Gould of Potternewton: You would not accept that it would be resource neutral?
District Judge Walker: I would need to be convinced certainly.

Q286 Chairman: Can I ask you to clarify something. Dame Elizabeth Butler-Sloss told us that there might be a problem with compensation for, say, a holiday missed if the only way you could get that compensation was by a claim through a civil court. Would you agree that that would make it almost pointless?
District Judge Walker: I think I would agree with the President on that one. If we ordered compensation, then I think it ought to be as a criminal fine, rather than as a civil debt, so that there is a very clear message that this is something which has got to be paid and has got to be paid relatively quickly rather than at whatever small amount would otherwise be paid each week.

Q287 Chairman: If it was going to be done as a fine, then it could be paid as compensation. I am not a lawyer, but it seems to me that either compensation is paid through an individual to compensate them, or, alternatively, it is a fine, which is a punishment? Is that not right?
District Judge Walker: I am not a criminal lawyer either.

Q288 Chairman: But you get means implications, do you not. If you are paying compensation, however poor you are, you would pay the amount the other party lost. If you were paying a fine, you would have to gear the fine to the means of the party.
District Judge Walker: Yes, but I think the message needs to be that it is a criminal sanction as opposed to a civil debt and enforced in a much more robust manner than civil debts are enforced; ultimately, I suppose, in an unusual situation, with the threat of imprisonment if it is not paid, which of course with a civil debt is not a possibility.

Q289 Chairman: If it was pursued through the Bill, or whatever, it would need to be clear. The money had to be collected as a fine?
District Judge Walker: I think so. I think people need to have a message that if the court makes an order of that sort, it has only made it because we felt it is appropriate, and it should be actioned. The trouble with civil debts is that a good number of them go uncollected.

Chairman: Thank you very much for that, thank you for your attendance and thank you for your last minute filling in for your colleague, who is presumably still digging her way through the snow! If you do have further points you want to raise, please write to us. We are on a very tight timetable, but if there are any issues you feel either should be in the Bill but are not or you need to clarify what you have said, please write. Thank you very much.
THURSDAY 3 MARCH 2005

Present: Gould of Potternewton, B Mr Clive Soley Chairman
Hooper, B Vera Baird
Howarth of Breckland, B Ann Colley
Nicholson of Winterbourne, B Jonathan Shaw

Memorandum by Women’s Aid

1. INTRODUCTION

1.1 Women’s Aid Federation of England (Women’s Aid) is the national domestic violence charity which co-ordinates and supports a network of over 300 local organisations in England, providing over 500 refuges, helplines, advocacy and outreach services. Our work is built on 30 years of campaigning and working in partnership with national and local government, health authorities, the justice system and voluntary organisations to promote the need for an integrated approach to prevent domestic violence and to protect abused women and children.

1.2 Women’s Aid believes that all children have a right to enjoy regular contact with both parents and family members, following separation, provided that it is safe. We are concerned however that despite recent government initiatives and despite the present law, a significant number of mothers and children who have experienced domestic violence are not safe during contact arrangements due to contact orders being awarded inappropriately.

The Government Green Paper recognises that of the 10 per cent of cases that get to court, in at least 35 per cent of cases there are concerns about the safety of the child and a number of these cases also involve domestic violence. More definite figures were provided by the Association of Chief Officers of Probation in 1999, when they stated that domestic violence is involved in about 16,000 cases a year—nearly 50 per cent of cases where a welfare report is ordered. A recent acknowledgement from CAFCASS stated that domestic violence is apparent as an issue in approximately 60 per cent of their cases. Yet the Green Paper contains a chart showing the decline in contact refusals in recent years and states that “less than 1 percent of applications for contact are rejected” (p13).

1.3 Although we consider measures in this Bill (with the exception of curfews) as appropriate proportionate and sufficient for use in cases where contact is refused unreasonably, we are concerned these measures will be unworkable where there is domestic violence, because they do not address safety concerns.

1.4 Research on contact enforcement cases in Australia found that 65 per cent involved concerns about safety and 58 per cent involved domestic violence or child abuse. Women’s Aid believes findings in England would be similar.

1.5 Women’s Aid recommends this Bill also introduce measures to ensure that in cases of domestic violence, courts are required to ensure contact is safe before it is ordered and before it is enforced, and that perpetrators of domestic violence be required to attend perpetrator re-education programmes to manage and reduce the risk they may pose during contact arrangements.

1.7 Our evidence on the Bill focuses on Part 1: Contact With Children.

---

7 OHP statement made by Chelsey Bonehill from CAFCASS at a national meeting for Children’s Support Workers from refuges on 4 October 2004 at the Quaker Meeting House, Sheffield.
10 Such measures were supported by the Women’s National Commission and over 300 organisations lobbying on the Domestic Violence Crime and Victims Bill during 2004.
Responses to Measures in the Draft Bill

2. Clause 1: Contact Activities

2.1 Women’s Aid recommends a new clause be introduced to Part 1 to amend the Children Act 1989 to addresses the issue of safety, by stating that if a parent is found to be violent the court must not grant residence or unsupervised contact to the violent parent unless the court is satisfied that this can be arranged safely. The amendment should also state that if there is not sufficient evidence to prove abuse but the court is satisfied that there is a real risk of harm to the child, the court can make whatever order it considers appropriate to protect the child (see Appendix 2).

2.2 Subsection 11A(8)—Women’s Aid welcomes that in considering whether to make a contact activity direction, the welfare of the child is to be the court’s paramount consideration. However where the making of an order is opposed, courts should have particular regard to whether this is due to domestic violence or allegations of abuse and concerns about child safety. Women’s Aid recommends that a mandatory risk assessment checklist be included in the Bill so that when courts determine whether the child will be safe if contact or residence is granted to the abusive party, the Court shall have regard to indicators of risk in all cases involving allegations of abuse11 (see Appendix 2).

2.3 Subsection 11C (3) To ensure that contact activity directions or conditions are appropriate in cases of domestic violence Women’s Aid recommends this clause is amended to ensure the contact activity proposed is appropriate and safe.

2.4 Subsection 11C(7) The new C1 applications forms introduced by government (which ask the applicant about domestic violence) may not always be responded to by the victim or may not always disclose domestic violence so Women’s Aid recommends that legislation requires the courts, before they direct or imposing a contact activity, to consider whether or not the person is subject to domestic violence, by inserting a new clause:

“(7) c) the extent of any risk from harm to the person from domestic violence or abuse

2.5 Subsection 11 D(2) When monitoring contact activity directions or conditions Women’s Aid recommends 11D (2) (b) is amended to also include “including reasons for non compliance where there may be safety concerns”.

2.5 We consider that “contact activities” should include attending a domestic violence perpetrators’ programme, or submitting to a specialist assessment in cases where sexual abuse against the child is alleged. For this reason Women’s Aid recommends that Clause 11E is extended to state:

“(c) it is necessary to assess whether contact will be appropriate and to assess and manage risk to the child.”

3. Clause 2: Facilitating and monitoring contact

3.1 Subsection 11F (5) (c) should include a requirement that courts receive a report of reasons for non-compliance with an order where there are safety concerns. As the welfare of the child is paramount, Women’s Aid recommends that Clause 11F(5) is extended to include:

“(d) monitoring and reporting on the child’s response to the contact arrangements”.

This is consistent with the Government’s pledge to “put in place robust monitoring arrangements” with regard to safeguarding children.12

4. Clause 3: Enforcement orders

4.1 Subsection 11G (3) Women’s Aid recommends that “reasonable excuse” is defined so that it includes domestic violence allegations or concerns about risk to the child. As exposure to abuse harms children, Women’s Aid also recommends that Clause 11G is amended so that if a parent uses contact to abuse their ex-partner or child, contact will be suspended and not reinstated until that person can satisfy the court that pose little or no ongoing risk to the child.

4.2 Schedule One Part Three In our experience contact arrangements frequently break down due to continuing violence or harassment from abusive ex-partners, but although such behaviour may breach a civil court order, or call for police action, this issue is not addressed in the Bill.

11 We have used the terms “ill-treatment” and “harm”, as these are the terms used in Clause 120 of the Adoption and Children Act 2002 in its amendments to the Children Act 1989.

4.3 Subsection 11G (3) (b) As a significant number of parents who do not comply with contact orders are victims of domestic violence, the wrong person is likely to be treated as a criminal if curfews are introduced.

4.4 Subsection 11H Before making an enforcement order courts must be satisfied that the person is not a victim of domestic violence and is reasonably unable to comply with a contact order because of safety concerns. Women’s Aid recommends inserting

“11H (c) whether the person is a victim of domestic violence and has concerns about risk to the child.”

4.5 Subsection 11G(9), when making an enforcement order courts should also have particular regard to allegations of abuse and concerns about child safety. Women’s Aid recommends that a mandatory risk assessment checklist be included in the Bill (see 2.2) that also applies at the enforcement stage.

4.6 Subsection 11H(3), Women’s Aid recommends that this Clause requires the courts to consider whether that person has experienced domestic violence from their ex-partner by inserting a new clause:

“(3) c) the extent of any risk from harm to the person from domestic violence or abuse”

5. Clause 4: Compensation for financial loss

5.1 In our experience women victims of domestic violence may sometimes find their cases taken back to court by the violent parent up to 40 times for which they may incur legal costs if they are not eligible for legal aid. Women’s Aid recommends that there should be provisions for financial loss to the resident parent where repeated applications have been sought and then orders are not honoured.

6. Framework for implementation

Women’s Aid is concerned that the new guidance from the President of the Family Division, The Private Law Programme, does not clearly specify any measures to be taken by the court when a concern about safety has been identified.

Women’s Aid believes that the current emphasis on reaching consensual agreements and processing cases quickly may put abused women and children in greater danger. Women’s Aid has made a number of recommendations in our response to the Green Paper to address this (Attached at Appendix 1).

If we are to prevent children from “falling through the cracks between different services” these are the “cracks” that need to be filled. Without these measures, the extended definition of harm and the new court application forms are likely to be ineffective in fulfilling the Government’s declared intention that “All contact must be safe for all involved”.

February 2005

Appendix 1: Further recommendations from Women’s Aid

Women’s Aid is extremely concerned that the new guidance from the President of the Family Division, The Private Law Programme, does not specify a single measure to be taken by the court when a concern about safety has been identified. There appears to be an assumption that safety will happen automatically. This is a serious flaw, as procedures for assessing children in private law cases involving allegations of abuse are inadequate, and there is insufficient supervised contact provision in every local area.

The Private Law Programme makes it clear in Section 1 that cases involving safety issues should be regarded as “exceptional”. As contact is refused in less than one per cent of cases, this view reflects court practice but contradicts a recent acknowledgement from CAFCASS that domestic violence is apparent as an issue in approximately 60 per cent of their cases.

Women’s Aid believes that the current emphasis on reaching consensual agreements and processing cases quickly will put abused women and children in greater danger. To alleviate this we recommend Government:

— requires the courts to prioritise the safety of the child in cases involving allegations of abuse;
— improve procedures for collecting evidence of abuse;

17 OHP statement made by Chelsey Bonehill from CAFCASS at a national meeting for Children’s Support Workers from refuges on 4th October 2004 at the Quaker Meeting House, Sheffield.
— require the family justice system to introduce effective procedures for obtaining information from the criminal justice system and statutory agencies;
— provide resources to enable children to be assessed over several sessions in a child-friendly setting in private law cases involving allegations of abuse;
— require the family justice system to assess risk effectively in all cases of abuse;
— make supervised contact available in every area;
— provide sufficient resources for perpetrator programmes and associated women’s support services, that meet national minimum standards;
— provide separate representation for children who may be at risk of harm;
— require the courts to insist on specialist assessments of all persons who are alleged to have committed child sexual abuse;
— Introduce clear protocols to ensure conciliation and court diversion proposals are not used in DV cases.

If we are to prevent children from “falling through the cracks between different services”¹⁸ these are the “cracks” that need to be filled. Many children are frightened of having contact with a violent parent.¹⁹ It is vital that the family justice system provides appropriate protection for these children.

February 2005

Memorandum by The NSPCC

The NSPCC welcomes the Government’s broad programme of reform set out in the Green Paper “Parental Separation: Children’s Needs and Parent’s Responsibilities” published in July 2004 and the commitment to seek the best outcomes for children who are experiencing the trauma of parental separation. We also welcome the commitment to broaden the range of options available to the court in intractable disputes about children’s contact arrangements following the separation of their parents. We recognise that the draft Bill is just one part of a much broader framework of reform and consultation.

Within this framework, the NSPCC supports the general principle of children maintaining contact with both parents following separation, provided that any arrangements made following separation are made with due regard for the safety and welfare of the children involved.

It is a matter of concern that courts have sometimes failed to distinguish between the unreasonable implacably hostile parent and the parent who has valid and legitimate grounds for refusing to co-operate with contact arrangements. It would be inappropriate and contradictory for the family courts to enforce contact orders that put children in danger. This is not acknowledged in the draft Bill. Nor is there an acknowledgement that the welfare of children involved in their parent’s separation is an ongoing and legitimate concern of the state and that this is not a concern which dissipates as a function of the length of time that has elapsed since the court proceedings.

It is in consideration of this that the NSPCC, along with other children’s charities, has consistently advocated the need for a coherent continuum of support services, to include the provision of direct services to children which are both accessible and intelligible to them, through which the management of non-compliance with contact orders can be addressed and the potential risk to children properly assessed. In the absence of a clear framework, it is difficult to see how the draft Bill fits within the overall strategy set out in the Green Paper, Parental Separation: Children’s Needs and parents’ Responsibilities: Next Steps. In this context, we would like to make a number of comments followed by some positive proposals which we believe could assist in achieving the Government’s aims in this complex area of law.

1. It is not clear from the draft Bill how the responsibilities of the court set out in s1 Children Act 1989, including the responsibility to give paramount consideration to the welfare of the child, are to be discharged. Nor is it clear that the whole of s1 applies, including s1 (3) the welfare checklist and s1 (5) the duty not to make an order unless the court is satisfied that to do so will be better for the child than making no order at all. If these sections do apply, could this be clarified in the Bill and guidance given on how the wishes and feelings of the children concerned are to be ascertained and conveyed to the court? No differentiation is made, for example, between the needs of a baby or toddler and the changing and developing needs of older teenage children.

¹⁹ See questions about the family courts which children from refuges put to the Home Office Minister, Paul Goggins MP, at our Listening to Children event on 16.7.04.
If these sections do not apply, then it is hard to see how the child’s Article 6 and Article 8 rights can be said to be properly respected within the proceedings, as there will be no objective information on which to base the assertion considered in paragraph 63 of the explanatory notes (The European Convention on Human Rights) that the action proposed would be a proportionate response to the objective, in that it would be a reasonable way to seek to ensure contact in order that the best interests of the child may be facilitated.

2. The Bill is not sufficiently child-centred, given the lack of provisions which relate directly to the responsibility of the court to consider either the safety of or the implications of the proposed actions for the child. The draft Bill refers to the need for the court to consider the likely effect of the enforcement order on the person who is in breach of the contact order, but there is no specific requirement to consider the likely impact on the child. The imposition of fines may, for example, push children and their lone parents further into poverty, thus potentially disadvantaging the child.

The NSPCC is concerned that, without the safeguards of both mandatory risk assessment procedures and judicial consideration of the need for separate representation of the child and their interests within the proceedings, the provisions as proposed may pose an unacceptable level of risk to the children concerned. The AMICA Survey of 130 abused parents in 1999 found that 76 per cent of the children were said to have been abused during contact visits ordered by the courts. Yet 39 per cent of the women had been threatened with imprisonment for refusing to comply with the contact order (Ref Radford et al & AMICA, “Unreasonable fears? Child Contact in the Context of Domestic Violence: a Survey of Mother’s Perceptions of Harm”. Bristol, Women’s Aid Federation of England 1999).

How is it envisaged that the safety of the child will be protected and the voice of the child will be heard in the proceedings proposed in the Bill? It is puzzling that there is no mention of the procedural links between the provisions in the draft Bill and those of s120 and s122 of the Adoption and Children Act 2002. s120, implemented on January 31 this year, adds “impairment suffered from seeing or hearing the mistreatment of another” to the definition of significant harm set out in the Children Act 1989. s122 is due to be implemented in September 2005 and adds s8 proceedings to the list of those specified in s41 of the Children Act 1989, in which a child may be separately represented by both a solicitor and a children’s guardian. Research gives a clear message that children do not expect their views to be determinative, but many want to be consulted and listened far more than they are.

(Ref Anna O’Quigley “Listening to Children’s View—the findings and recommendations from recent research” Joseph Rowntree Foundation 2000) Recent case law also supports the view that the evidence is now clear that children whose parents are separating, especially if parents are in conflict with one another, need a voice, someone who is able to listen to anything they wish to say and tell them what they need to know. Sometimes they need more than that and that is someone who is able to orchestrate an investigation on their behalf” (Lady Justice Hale. (Re A [2001] 1 FLR 7.15. CA)

The NSPCC would recommend that the first step in any case of non-compliance would be consideration by the court as to whether the order in its current terms is consistent with the court’s responsibility to protect the welfare of the child. Such consideration would include both a full assessment and investigation of the potential risk to and the likely impact on the child of enforcing the contact order, including the risks arising from the child’s involvement in domestic violence (s120) and the need for separate representation of the child and his or her interests within the proceedings (s122).

3. The NSPCC is concerned that the Bill appears more concerned with the assertion of parental rights than the welfare of children and young people and that this skewed emphasis undermines the principle of the paramountcy of the child’s welfare established by the Children Act 1989. The emphasis is on enforcement rather than a consideration of the consequences of lack of contact for the child concerned. In relation to the position of children, there is no consideration in the Bill of the position of and disappointment for the child if the planned contact simply does not take place.

4. Although the Secretary of State’s introduction emphasises the need for mechanisms and services which support and facilitate contact arrangements, the language of the Bill is generally punitive and the emphasis is on enforcement as a single act of deterrence rather than facilitation as an ongoing process of conciliation and negotiation. There is, for example, no reference to an augmented use of s16 Children Act 1989 (Family Assistance Orders) recommended by the NSPCC and many other children’s charities and organisations as an appropriate statutory mechanism for increasing support to children and their families.

5. The evidence base for the proposals for the enforcement of contact is unclear. The NSPCC is not aware, from the limited research available, of findings which would indicate that the outcomes for the children involved will be improved by the measures outlined in the draft Bill. It would be helpful to know in what proportion of cases is enforcement likely to result in contact, what is the quality of that contact and what are the short and long term effects on the children concerned? In addition Clause3 (4)—Enforcement Orders refers
to the possibility of a curfew order including “a compliance monitoring requirement”. This clause is in brackets. Is it really envisaged that compliance will be achieved through the use of “electronic” tags? It is referred to again without brackets in explanatory note 19.

6. The draft Bill is premature in that it pre-empts other consultations and developments in the field. The NSPCC, like many other bodies and organisations concerned with the welfare of the child, has recently given evidence to the Parliamentary Select Committee looking at the Family Justice system. The committee was set up in recognition of the fact that there are many faults in the current functioning of the system and that the time is ripe for review and change. The NSPCC concurs with that view. However, that committee has yet to report and therefore the draft Bill would appear to pre-empt any recommendations that the committee may make. In addition, at the time of this submission we are awaiting the publication of the DCAs consultation document on contact which will have an important bearing on the matters addressed in the draft Bill.

Proposals for the management of non compliance with Court Orders for Contact—a staged approach.

These proposals are based on the recommendations contained in the report of the LCD Stakeholder Group on the Facilitation and Enforcement of Contact produced in 2003. They therefore have a high degree on consensus across a wide range of inter-disciplinary stakeholder groups. They also recognise that contact is the mechanism through which relationships can be maintained and established. They are the means to an end not the end in itself.

Central to the proposals are the following two core principles:

— That any order which the court is asked to enforce is appropriate, accords with the need to give paramount consideration to the child’s welfare needs and is safe for the children concerned and for both their parents.

— That the representation of the wishes and feelings, as well as the best interests of the child, are crucial elements in the process and therefore there should be a presumption in favour of separate representation of the children in all such cases. (Until s.122 of the Adoption and Children Act 2002 is implemented in September 2005, this can be achieved under Rule 9.5 Family Proceedings Rules 1991).

**Stage 1**

In any case where an order for contact is not being complied with, the first step is a thorough investigation by the court as to whether the order in its current terms does meet the child’s welfare interests. Such an investigation may include consideration of the following:

(a) The circumstances in which the order was made.

(b) The age of the order.

(c) The reasons for non compliance.

(d) An assessment of the child’s welfare needs by CAFCASS, with other expert assistance where necessary, addressing issues arising from the welfare checklist. This assessment should include an examination of the likely effect upon the child of the order being enforced.

(e) In appropriate cases where there are allegations of abuse, a specialist risk assessment.

(f) In appropriate cases where one parent has been proved to have used violence upon the other, an assessment of the significant harm likely to have been suffered by the child (s120 Adoption and Children Act 2002).

NB What follows is based on the assumption that the re-visited order of the court for direct or indirect contact follows appropriate investigation and does indeed accord with the child’s welfare needs. The obligations and responsibilities of each parent under every order must be carefully spelt out and the consequences of non compliance made clear at this and each ensuing stage of the process.

**Stage 2**

Where an order has not been complied with, voluntary “non-punitive” measures should normally be the court’s first option. Such remedies would run alongside a requirement on both parents to co-operate with the contact order.

Remedies would include mediation/conciliation alongside a variety of supportive work, perpetrator programmes, parent education, training in the management of conflict, psychological or psychiatric assessment and therapy in relation to either parent, and child focused work including child advisory services.
The involvement of CAFCASS would be critical. It is also vital that a substantial co-ordinated and nationwide framework of services is in place, if this fresh approach to the management of non-compliance is to be effective. The use of a revised s16 Family Assistance Order with increased powers to support children and their separating families and to provide some direct work with children would be a key element within this framework.

**Stage 3**

If a parent continues not to comply with an order and does not co-operate with such non-punitive measures on a voluntary basis, there should be a power to compel their participation. The legislation should set out a broad and flexible ‘menu’ of orders which can be adapted to the circumstances of each individual case. To be required to hear about and consider the possibility of mediation, perpetrator programmes, parent education, psychiatric/psychological assessment etc.

NB Once this stage has been reached, the court should take over responsibility for ensuring non-compliance; it should not be left to the aggrieved parent. Non-compliance with court orders is a matter for the state, not the individual, and takes account of the state’s obligations under the European Convention on Human Rights. CAFCASS should be involved in the proactive monitoring of the order and have the power to bring cases back to court.

**Stage 4**

Ultimately the court must retain power to compel compliance with its orders or at least to punish non-compliance (subject always to the provisos in relation to the welfare of the child set out at the beginning). Punitive sanctions should only be used in extreme circumstances where there has been a flagrant and intentional breach of the court’s orders and only where other options have been tried and failed.

The range of sanctions should be extended to include:

- Compensation.
- Community punishment (with specifically designed programmes).
- Community rehabilitation (including a condition of attendance at an appropriate programme).
- Deferring sentence for a period to see if compliance is achieved.
- Possibly the confiscation of a parent’s driving licence, a sanction available in some jurisdictions in the USA (also use this for Child Support Agency enforcement).

NB Sanctions should not run in one direction only, e.g. where a parent has sought and obtained a contact order and then behaves abusively during a contact visit, he or she may also be the subject of penalties.

The NSPCC believes that taken together these proposals could considerably improve the position of children whose parents are separating, by putting in place both adequate mechanisms to ensure their safety and continuing well-being and ensuring that they are enabled to maintain as positive a relationship with both parents as is possible in their individual circumstances.

24 February 2005

---

**Examination of Witnesses**

**Witnesses:** Ms Nicola Harwin, Chief Executive, Women’s Aid, and Ms Natalie Cronin, Head of Policy, NSPCC, examined.

**Chairman:** Can I welcome Natalie Cronin of the NSPCC and Nicola Harwin of Women’s Aid. Thank you very much for being with us today. I would also welcome the public in the Thatcher Room who are watching this on a video link. The transcript of the evidence for this should be available early next week for anyone who might want to read it. Can I ask for any interests?

**Baroness Howarth of Breckland:** I have to declare an interest as the vice-chair of CAFCASS.

**Q290 Chairman:** In those circumstances, you should not take part in the questioning of the Minister as you are appointed by her. Can I ask the witnesses: do you believe that the proposals in this draft Bill will improve the current situation?

**Ms Cronin:** We believe that they have the potential to improve the current law but only if the child-centred focus is strengthened. By that we mean independent investigation of the child’s situation to ensure that contact is safe and separate representation for the child. Secondly, enforcement should be part of the process for managing non-compliance, which is aimed at improving the relationship with the child rather than as a single act of deterrence. Thirdly, it will only be effective if it is properly resourced. The cost of assessments and representations, the full range of remedies available to the court and the
enhanced role of CAFCASS must be properly funded.

Q291 Chairman: I take it from that answer you do not believe that this Bill will have no resource costs at all?

Ms Cronin: That is right.

Q292 Chairman: You think it will have significant costs?

Ms Cronin: Yes.

Q293 Chairman: I have used the word “significant”. Would you agree with that?

Ms Cronin: Yes, significant.

Q294 Chairman: Do you agree?

Ms Harwin: Yes. In Women’s Aid’s view, we believe the Bill might help the courts to deal more effectively with cases where contact is refused unreasonably, but we do not believe the Bill will solve the problem of non-compliance with contact orders as it does not address the safety concerns that are the cause of so much non-compliance. There is nothing in the Bill that requires the courts to ensure that contact orders are safe before they are enforced and that they take into account children’s wishes and the impact on children. We do not know in this country why we have no evidence as to why mothers do not comply with contact orders. It is predominantly mothers as they predominantly are the resident parents. Research into 100 contact enforcement cases in Australia found 65 involved safety concerns and 58 involved domestic violence or child abuse. We believe if similar research was done here the findings would be much the same. We agree with the NSPCC proposal that we need more stages in the Bill that begin with investigation, risk assessment and looking at why the contact order is not working. We also feel that the approach is out of step in not recognising the issues in relation to non-compliance and safety with other developments in tackling domestic violence that are taking place across government and more widely. For example, the Metropolitan Police have put in place risk assessment procedures now for all the cases of domestic violence it deals with. It also recognises that separation and contact are some of the highest risk factors in homicide. We also have research which shows that insufficient attention to safety and contact arrangements leads to attrition within the criminal justice system in terms of effective prosecution because witnesses withdraw because they are not sure that there will be long term safety over contact arrangements. We also need to look at this Bill in a much wider context.

Chairman: We are going to go through some of these step by step, particularly enforcement and things of that nature.

Q295 Baroness Gould of Potternewton: We had the privilege of interviewing Dame Elizabeth Butler-Sloss earlier this week. One of the things that came out of that discussion was that at present no judge would make a contact order unless allegations of violence were not proved or violence had absolutely no effect on the welfare of the child. She did say that the only evidence there was to say that this was not the case was anecdotal. We have your papers and briefings which rather counter that argument and I wonder whether you would like to elaborate a little more on that and also perhaps on the fact that you think, in your view, the government’s evidence has made it clear that contact has been granted where there is evidence of violence within the home.

Ms Harwin: If you look at all the information, right across the board, starting with the fact that there is a connection between domestic violence and child protection issues, we know that in 40–70 per cent of cases of domestic violence there are also child protection or child abuse issues involved. The problem with the statement that judges would not make contact orders in the cases you have mentioned is that there has been no monitoring of contact orders, so I am not sure what the evidence basis is for that statement. On the contrary, Women’s Aid carried out a survey in 2003 involving 178 refuge organisations to find out whether court practice on domestic violence and child contact had improved since the introduction of the good practice guidelines in 2001. We rigorously followed up all the cases and identified the names of the women and children involved, though obviously not publicly. 12 per cent of those refuge organisations knew of cases where contact orders had been granted to parents whose behaviour had caused the children to be placed on the child protection register prior to coming into the refuge. Six per cent knew of cases where contact was granted to schedule one offenders convicted of violent crime to a child and in some of those cases unsupervised contact was ordered. 20 per cent knew of cases where residence orders had been granted to abusive parents. The problem is, because abuse usually takes place in the home where there is no independent witness, it is very difficult to prove. It is very difficult to get evidence. The problem is also that, as other research has shown, in 90 per cent of cases children are in the same or a nearby room when abuse is occurring, but they are very unlikely to disclose abuse during a one-off interview. At present we do not have sufficient mechanisms in place for children over time to be able to disclose what is happening to them. We know that often children who are abused or who witness domestic violence it—do not always tell their mothers until they come to the

1 Note by the witness: 83 per cent of participants in Womans Aid’s 2003 survey said that young children do not disclose abuse in a short one-off interview.
refuge when they have an opportunity with child support workers to disclose what has happened to them. The problem is there are not effective risk assessment procedures in place yet, nor enough mechanisms to safely assess children’s wishes and their safety. The evidence to the government consultation on safety and justice which led to the Domestic Violence Crime and Victims Bill, from many parts of the country, from domestic violence fora, from local domestic violence services, showed that there were clear problems with court ordered contact. Indeed, the Home Office commissioned the Women’s National Commission to carry out a consultation with survivors where this was clearly identified as a problem. If I ask you to consider the information we have about court ordered contact cases, we know that 10 per cent of all arrangements for contact after separation go through the courts and this is the government’s own information in the Green Paper.

Q296 Chairman: Some of the information you are giving you have given in written form and you are using up your own time. Can I suggest you make the direct points you want and point out that the evidence is in the paper?
Ms Harwin: The problem is that there is a credibility gap. We have evidence from several different sources, both small pieces of research and the government’s own information, about the number of cases where domestic violence is there, the risk is there and CAFCASS has recently said possibly 60 per cent of cases. Yet, less than one per cent of cases are refused. I do not believe that in that gap there are not cases where there is no risk. As we have heard the anecdotal evidence that is referred to, we have heard from all round the country that there is a problem.

Q297 Baroness Gould of Potternewton: Could I ask you about the risk assessment checklist? As I understand it, they do have a checklist in New Zealand courts.
Ms Harwin: That is correct.

Q298 Baroness Gould of Potternewton: Are you suggesting that a similar sort of checklist should apply here, because it has been said recently that that has not been very effectively used in New Zealand.
Ms Harwin: I will not go through the checklist but I would support the proposals that the NSPCC has put forward for four stages, where the first stage does involve a checklist. I would support all the points in the NSPCC checklist. That is particularly in relation to enforcement but the problem starts at a much earlier stage. There is a much more widespread acknowledgement in the domestic violence sector that we need to have risk assessment checklists operating across a range of agencies and also within the courts.

Q299 Chairman: Can I ask Natalie Cronin whether the NSPCC has thought about what should be in the Bill in order to address your concern? Is there anything they have considered ought to be in the Bill to address this specifically? Are you making a case for the concerns that you both have, understandably, about the problem of violence in the home?
Ms Cronin: In relation to the child centred focus and making sure that there is an independent investigation of whether it is safe to have contact and the separate representation for the child, we have put those points in relation to clauses in the Bill. What we would like to see is a clause linking in sections 120 and 122 of the Adoption and Children Act 2002 in this draft Bill. Also, the staged approach we think could be added into the Bill and we have set that out in our written evidence so I will not repeat it.

Q300 Vera Baird: I am looking at the transcript of what Dame Elizabeth Butler-Sloss said because unfortunately I was not here. Asked about domestic violence she said that you will not make an order for contact unless you are quite satisfied that the allegation of violence is either not proved or alternatively it is the sort of violence that has absolutely no effect on the welfare of the children. She of course is an appellate judge and not a judge who deals with contact cases in the first instance. Is she right that no judge would do what she is suggesting?
Ms Harwin: From all the evidence we have and also the calls we get daily to the national domestic violence help line and to our staff, I cannot say that she is.

Q301 Chairman: Do you agree with that at the NSPCC?
Ms Cronin: I would remind the Committee about the AMICA survey of 130 abusive parents in 1999 and it found that a bit more than three-quarters of the children were said to have been abused during contact visits ordered by the courts, so it would seem that there is some evidence that would contradict that.

Q302 Baroness Howarth of Breckland: When the NSPCC mentioned your three points, the third one was about the full range of activities that would be available to families. The draft Bill does contain measures that would enable courts to require parents to attend activities to facilitate contact. Can you expand on what you consider these measures would be? Will they be effective? What are the resource implications?
**Ms Cronin:** First of all, we have to make sure that contact would be safe. Then we would like to see a wider range of measures available. In particular, one might think about greater use of family assistance orders, but also a variety of supportive work. That would include things like perpetrator programmes, parent education, training in the management of conflict, psychological or psychiatric assessment and therapy in relation to either parent, and child focused work including child advisory services. We would like to see a wider range of remedies available. We would like to be sure that those measures are available to the court. At the moment, there are not very many contact centres, for example, and the DCA Committee report that came out yesterday quite rightly talks about that being an important consideration. It also thinks about linking it to children’s centres and extended schools. Finally, we would like to see those remedies available on a voluntary basis first and then made compulsory if they are not being respected.

**Q303 Baroness Howarth of Breckland:** What about anger management? Do you think that has a role in the spectrum and do you think it should be voluntary?

**Ms Cronin:** Yes. That can come with the training in the management of conflict and that would be important.

**Q304 Chairman:** Do you see those as all part of the mediation process or something separate? If you think of a couple who end up in a court—and we are all trying to avoid that—if you say there might be a conflict resolution or something of that nature, would you see that as taking part in the context of mediation or would you just be saying, “Your chances of having continuing contact with your child are not going to happen unless you do something about your anger management”?

**Ms Cronin:** Ideally, one would want those measures to be available to as wide a pool of people as possible who are prepared to take them up. It is a situation where there are limited resources. If the court is going to be drawing on those measures, these measures have to be available; otherwise, the court’s order will be ineffective.

**Q305 Baroness Howarth of Breckland:** We know that intervention at the earliest possible stage is likely to be most effective. Do you think there are ways of getting folk to these sorts of services before the thing becomes entrenched?

**Ms Cronin:** I agree with you that prevention is the most effective course. If those services are more widely available and more people are using them, there is less of a taboo about using them and they become part of the mainstream culture. It is about the resources which are available to put these services in place.

**Q306 Baroness Howarth of Breckland:** That links into your saying that it should be part of the total programme of child care matters, which is what you were you saying in your evidence.

**Ms Cronin:** Yes.

**Q307 Baroness Gould of Potternewton:** On the question of resources available, the Bill is there to help facilitate contact with the child. One of the ways of facilitating that is to have proper contact centres. I wonder whether you can say a word about whether you feel that facility is sufficient or whether you feel that this is where more resource does need to be put in?

**Ms Harwin:** Up until very recently, from Women’s Aid’s perspective, the availability of contact centres has been very much a postcode lottery. There are probably only two contact centres in the country that provide the level of supervised contact that is appropriate in high risk cases. To go back a bit, the range of measures has really to depend upon the assessment of risk and safety. If there is no risk, if contact has been refused unreasonably, a whole range of mediation and different parenting skills may be appropriate. If there is a risk, it may be in some cases, even when there is a violent parent who is a risk, that there may be situations in which it is appropriate for there to be contact. We would not be against that at all. What we are for is safe contact but that risk has to be managed. That means having available a range of facilities. The problem with anger management is that it is not a way of addressing abusive behaviour in a violent relationship. You have to have proper perpetrator programmes, a policy which the government is pursuing through the Home Office and the probation services, which is putting in place properly accredited perpetrator programmes to a certain model. The problem at the moment is that entry to those programmes requires usually a criminal conviction of some kind to a level of assault which is unlikely, when we are talking about referral from the family justice system. There is a problem at the moment of linking from the family justice system into some of the measures that are available within the criminal justice system. That would need to be addressed. There might be a possibility of having someone attend a supervised contact centre, properly supervised, and also be on a perpetrator programme to look at re-education. That might be a way to manage an effective and ongoing safe contact, but you would have to make sure that it was monitored.

---

2 *Note by the witness:* There is still an acute shortage of contact centres which can provide appropriate supervised contact for high risk cases.
and not just seen as a short term solution because risk sometimes does not go away for many years.

Q308 Ann Coffey: I have a question on early intervention and resources. One of the resources that is going to be rolling out are children’s centres and the idea of the extended school, supporting parents in that situation. Do you see a role for early intervention, helping parents who are separated, helping them resolve their relationships through children’s centres?

Ms Harwin: We in Women’s Aid believe that children’s centres could provide an opportunity for early intervention and also for assessment of children in terms of whether or not a situation is safe. We think there is an important role for them.

Q309 Chairman: Do you agree?

Ms Cronin: Yes.

Q310 Jonathan Shaw: You have said in evidence that the reason why contact perhaps is not complied with by women particularly is because they are victims of domestic violence but no one has investigated that. No one has assessed that. That could be one of the large reasons. You are also saying to us that many women who have been the subject of domestic violence are also then threatened with prison sentences. Now we are looking at curfews and tagging and unpaid community work. Are you saying that, without proper risk assessment, we are in danger of further compounding what has happened to a person who has already been a victim in certain circumstances but no one has spoken about it and no one has taken evidence any further. Is that a summary?

Ms Harwin: Yes and that is the reason why we would support the proposal put forward in the NSPCC’s evidence about the stages because we think that might deal with that problem to some degree, putting punitive measures at the end of a process which has had proper investigation and been mindful of the safety and risk considerations.

Q311 Jonathan Shaw: You want an independent risk assessment of the child’s circumstances? Is that right?

Ms Cronin: Yes.

Q312 Jonathan Shaw: What do you mean by “independent”? Is that an NSPCC officer?

Ms Cronin: Somebody who would be representing the interests of the child. It could be CAFCASS.

Q313 Jonathan Shaw: So not another agency? As part of their work, CAFCASS officers may assess and look at this as part of the picture.

Ms Cronin: They would send that independently to the court.

Q314 Baroness Howarth of Breckland: Are you suggesting, in the same way as public law, that private law should have those sorts of rights, so it is exactly a transfer of the independent, guardian-type intervention?

Ms Cronin: Yes, as set out in sections 120 and 122. In addition to what we said earlier about curfews and tagging, we would like to see strong evidence that those would be effective methods in ensuring compliance; that they would only be used as a last stage of the four stage process that we mentioned. Obviously, they should not harm the interests of the child. Again, that is in line with the recommendations of the DCA Committee, 19.23, which say that enforcement action should not occur while there are unresolved safety concerns and that the interests of the child should be paramount.

Q315 Jonathan Shaw: What do you think might be an appropriate set of circumstances whereby a judge may apply an enforcement order for someone who is not complying?

Ms Harwin: In a situation where there was no good reason or the reason was one which was not acceptable, where that had been through a proper process of assessment to reach that point. In terms of curfews or tagging or electronic devices, I am not sure that they are commensurate really. We have a problem in terms of addressing the prosecution of domestic violence and the conviction for domestic violence. The attrition rate in that is absolutely enormous. There are very few resources for using tagging or curfews in the criminal arena so it seems to me very strange that we are thinking of rolling it out in this arena. I am not sure how effective it would be.

Q316 Jonathan Shaw: What would be different in these sets of circumstances is the relationship between the court and the parents. At the moment, the only available enforcement that a judge can use is prison or a fine. As we heard earlier, no one has any money in these circumstances so that is not much of a deterrent, so we have prison. There will be a menu of options starting off at a conciliatory stage and then at the more punitive stage. Do you agree that it is going to be a far more informed relationship and understanding of these particular cases so that having yet another assessment or requiring further assessments by CAFCASS officers is not going to be necessary?

Ms Harwin: Sorry? At which stage will it not be necessary?

Q317 Jonathan Shaw: To have on the face of the Bill some sort of independent assessment of the child’s circumstances and their safety circumstances is not necessary because these issues will be taken account of by CAFCASS officers and also the relationship
between the court and the parents will be different because we have a whole different framework within which people make decisions.

Ms Harwin: In our view, the framework that is there at present will not safeguard children. We do not think it has enough in it to safeguard children so we think there are likely to be applications for enforcement of contact where the contact order will have been unsafe in the first place. That is why we think it is dangerous. The evidence from Australia shows a 65 per cent likelihood that there will have been non-compliance because of safety concerns so I think we have to take that as the only piece of real information we have about that at this stage. There is no evidence from this country at all that tells us what the reasons for non-compliance are.

Q318 Chairman: I understand why you are saying that the enforcement bit should be put right at the end, regardless of what it is, never mind the aspect of enforcement, whether it is a fine or weekend prison or whatever. Do you not see a problem here? If there is not an ability to use it at an earlier stage, it plays right into the hands of the parent who wants to manoeuvre the other one out of it, which is usually the non-resident parent, because if you play for time you create a situation where the child is pulled into the orbit of one and out of the orbit of the other.

Ms Cronin: The court would want to be absolutely sure that the contact does not present any risk of harm to the child. We believe the best way of doing that is having an independent assessment of the risk. If that takes a bit of time, it takes a bit of time. If it means that contact will be safe, surely that has to be the most important consideration?

Q319 Chairman: I understand that it is important but there may be a situation where there is not a perceived threat by anyone, but one parent has an interest in delaying matters so that they increase their chances of improving the relationship with the child and the child losing contact with the usually non-resident parent. Do you see that danger or do you think that is not a danger?

Ms Cronin: I see what you are saying. There are things that can be done to improve delay like better resources for providing those assessments. It is disappointing that in the cost assessment that is made in the Bill there is no reference to the cost of having independent assessments as there would be for implementing sections 120 and 122. If those were properly resourced, they should not present too burdensome a delay to the process and it would ensure that safety is indeed paramount.

Q320 Ann Coffey: Do you think that any other consideration should take precedence over the welfare of the child when making an enforcement order?

Ms Cronin: No. The Bill is slightly confusing on this matter. Clause one sets out that the welfare of the child is to be the paramount consideration of the court while clause three states that in making an enforcement order a court must take account of the welfare of the child concerned. It is not absolutely clear in the Bill. We know from international case law that, where there is conflict between the rights of the child and the rights of the parent, the rights of the child should prevail. I am talking about Article 8, the right to family life here, and I can give you the case reference for it.

Q321 Ann Coffey: Are you saying you think in clause three it should be strengthened?

Ms Cronin: Yes.

Q322 Ann Coffey: What would you suggest?

Ms Cronin: That it is reiterated that it should be paramount.

Q323 Ann Coffey: It has been suggested that the welfare checklist should be amended to include a requirement for the courts to have regard to the importance of sustaining a relationship between the child and the non-resident parent. What are your views of that proposal?

Ms Cronin: That might be possible. We would like to see a couple of things added to that. First, that it is safe to do so and, secondly, that it includes the relationship with other siblings as well as the non-resident parent.

Q324 Ann Coffey: You are going back to the welfare of the child.

Ms Cronin: Which brings us back to the welfare of the child, yes.

Ms Harwin: In terms of whether anything else should take precedence over the welfare of the child, we agree it should always be paramount but we just want to draw the Committee’s attention to the leading case law precedent on the enforcement of contact which is in REAVN N, [refusal of contact committal], [1996] which states that the welfare of the child is not paramount when the parent is being committed to prison for failing to comply with the contact order. In that particular case it was acknowledged that the father had a history of violence, including a very serious assault on his former wife for which he was sent to prison, but the mother was sentenced to six weeks in prison for refusing to hand over the child. We think the Bill should overrule that precedent.
Memoranda by the Department for Education and Skills

Delegated Powers

INTRODUCTION

1. The draft Children (Contact) and Adoption Bill, has 11 clauses and 2 Schedules. This Memorandum sets out the delegated powers conferred by the Bill. It explains in each case the purpose of the power; the reason why it is to be left to delegated legislation; and the nature and reason for the parliamentary procedures that apply, as well as the proposed content of regulations made under each power.

MAIN PROVISIONS OF THE BILL

2. Part 1 of the Bill implements policy commitments set out in the Green Paper Parental Separation: Children’s Needs and Parents’ Responsibilities (Cm 6273) which was published on 21 July 2004. It provides the courts with powers to facilitate contact and enforce contact orders, through a range of new disposals such as power to direct parties to a course or programme, or in respect of defaulting parties impose enforcement orders for unpaid work or curfew, or require financial compensation from one party to another.

3. Part 2 provides a mechanism for the suspension of intercountry adoptions from particular countries where there are concerns about child welfare.

4. Part 3 contains miscellaneous technical provisions including consequential amendments and provisions about the operation of delegated powers.

5. Delegated powers conferred by provisions in Parts 1, 2, and 3 are described below.

TERRITORIAL COVERAGE

6. The Bill extends to England and Wales only.

RATIONALE AND OVERVIEW OF DELEGATED POWERS

7. The Bill contains powers to make delegated legislation. In considering whether matters should be specified on the face of the Bill or left to delegated legislation the Department has taken account of the need to ensure that:

(a) the overall legislative framework and the substantive policy provisions are presented clearly on the face of the Bill;

(b) the provisions of the Bill contain sufficient flexibility to enable effective implementation of policy and to respond to changing circumstances; and

(c) detailed technical and administrative arrangements are not unnecessarily set out in primary legislation. It is the Government’s intention to reduce the extent to which legislation prescribes processes in detail. Where there is a need for administrative and technical details to be spelt out in legislation (for example, for reasons of equity, or to protect individual rights), use of secondary legislation ensures appropriate flexibility and additional opportunities to consult on matters of detail and ensures that the key powers and duties in primary legislation are not unduly obscured by this detail.
PARLIAMENTARY SCRUTINY

8. All powers of the Secretary of State or the National Assembly for Wales to make regulations under the Bill are exercisable by statutory instrument.

9. Statutory Instruments made under the new section 11C of the Children Act 1989 as inserted by clause 1, and under clause 7, are to be subject to the negative resolution procedure. Regulations and orders made by the National Assembly for Wales will be subject to the National Assembly’s own procedures as provided for in its standing orders under the Government of Wales Act 1998. In the case of commencement orders under clause 11, no Parliamentary procedure is required, in line with normal practice.

DETAIL OF DELEGATED POWERS

Part 1: Contact with Children

Clause 1—inserted section 11C Children Act 1989—Sections 11A and 11B: further provision

10. Section 11C(9) of the Children Act 1989, as inserted by clause 1 of the Bill, provides the Secretary of State, or the National Assembly for Wales, with power to make regulations as to the circumstances in which financial assistance may be provided by the Secretary of State or the National Assembly for Wales to a person in meeting the costs of a contact activity which he or she is required to take part in as a result of a court making a contact activity direction or attaching a contact activity condition to a contact order. The regulations may also cover the form and amount of any such assistance. This power will be exercisable via the negative resolution procedure in England (section 104 Children Act 1989, as amended by paragraph 3 of Schedule 2 to the Bill).

11. Section 11E of the Children Act 1989, as inserted by clause 1, defines contact activities as information sessions, programmes, classes, counselling or guidance sessions, or other activities which are either devised for the purpose of assisting a person to establish, maintain or improve contact with a child, or which may be used for that purpose.

12. The default position as regards these contact activities will be that the cost of the activity is to be met by the person required to attend. However, we intend to provide through regulations under section 11C of the Children Act 1989 that, in England, the Secretary of State may meet the cost of contact activities for those who cannot afford these costs. The precise detail of how this test will operate is presently being considered. The Assembly intends making similar arrangements in Wales.

Part 2: Adoption

Clause 6: Declaration of special restrictions on adoptions from abroad

13. Under clause 6(4) the Secretary of State may make a declaration that special restrictions are to apply in relation to intercountry adoptions from a particular country. Those special restrictions are to be set out in regulations made under clause 7 (see below).

14. The Secretary of State must consult with the National Assembly for Wales prior to making any declaration, since that declaration will apply with respect to both England and Wales. He must also publish a “restricted list” of countries with respect to which special restrictions presently apply.

Clause 7: The special restrictions

15. Clause 7(1) requires the Secretary of State to make regulations setting out the special restrictions that are to apply where he has made a declaration under clause 6. Further detail of what is to be contained in regulations made under this clause is provided for in clause 8. The regulation making power is to be exercised by negative resolution, after consultation with the National Assembly for Wales.

16. Regulations under this clause must provide for the Secretary of State not to take any step he might otherwise have taken to further intercountry adoptions from any country presently on the restricted list, unless the prospective adopters in a particular case are able to satisfy him that the adoption should proceed (that is, that theirs is an exceptional case).

17. Clause 8 provides that regulations made under clause 7 may also provide for the Secretary of State to specify a particular step in relation to the adoption process from any given country in the restricted list. The regulations may also provide one or more conditions that must be met in relation to adoptions from countries
where such a step has been specified. Breach of a condition would constitute an offence. If the specified step had already been taken before the country was added to the restricted list, no offence is committed.

18. Other than the compulsory provisions which must be included in the regulations as set out above, we intend to use these regulations to set out the condition that a notification from the Secretary of State is required before the prospective adopter can proceed with an adoption from a country on the restricted list.

**Part 3: Miscellaneous and Final**

**Clause 10—Regulations**

19. This clause provides that statutory instruments made under this legislation by the Secretary of State are subject to the negative resolution procedure, and contains the standard provision that secondary legislation may make different provision for different purposes, as well as that specific exceptions may be made from cases to which the provision extends.

**Clause 11—Short title, commencement and extent**

20. This clause provides that all provisions in the Act are to come into effect by order of the Secretary of State. Such an order is to be made by statutory instrument, following consultation with the National Assembly for Wales.

**February 2005**

**European Convention on Human Rights**

**INTRODUCTION**

1. This memorandum is provided by the Department for Education and Skills for the purposes of pre-legislative scrutiny of the draft Children (Contact) and Adoption Bill. The Department’s view is that the provisions of the draft Children (Contact) and Adoption Bill are compatible with the Convention rights defined in section 1 of the Human Rights Act 1998. This memorandum sets out in brief the reasons for this view.

2. The Department’s view is that before introduction the relevant Minister will be in a position to make a statement that the provisions of the Bill are compatible with Convention rights.

3. The provisions in the draft Bill which raise potential Convention rights considerations are the following:
   - Clause 1—contact activities
   - Clause 2—monitoring and facilitation of contact orders
   - Clause 3 and Schedule 1—enforcement of contact orders
   - Clause 4—compensation for financial loss
   - Clauses 6 to 8—adoptions with a foreign element
   - Schedule 1—paragraph 7 of Schedule A1 CA 1989: breaches of enforcement orders

**Part 1 of the Draft Bill**

4. An issue relevant to the provisions of Part 1 of this draft Bill is the relationship between the child and the person seeking contact. A child does not automatically have a family life with his parents, however, the European Court of Human Rights has held that a child born of a marital union has a bond with his parents from the moment of his birth which amounts to family life, and subsequent events cannot break that save in exceptional circumstances. This case law has been borne in mind when considering the Article 8 European Convention of Human Rights (ECHR) rights of the person on whom a contact activity direction or condition, or an enforcement order, may be imposed.

20 *Lebbink v The Netherlands* [2004] 2 FLR 463—the existence or non-existence of family life was essentially a question of fact depending upon the real existence in practice of close personal ties (this was in the context of an unmarried father seeking contact with his young daughter).

21 *Kosmopoulou v Greece* [2004] 1 FLR 800.
5. Further, the Department would note that the provisions in this draft Bill are made against the background of domestic caselaw authority to the effect that it is almost always in the interests of a child whose parents are separated to have contact with the parent with whom the child is not living.

Clause 1—Contact Activities

6. The amendments made to the Children Act 1989 (CA 1989) by clause 1 give a court the power to make a contact activity direction or to attach a contact activity condition to a contact order, in specified circumstances.

7. When determining whether to make an order containing a contact activity direction or condition, the welfare of the child with whom contact is sought will be the court’s paramount consideration. In the case of contact activity directions, this is provided for in section 11A(8) CA 1989, as inserted by clause 1. In the case of contact activity conditions, this will be achieved via the application of section 1(1) CA 1989 (as the court will be attaching a condition to a contact order, making section 1(1) applicable).

8. Before making an order containing a contact activity direction or contact activity condition, the court must satisfy itself as to the matters specified in subsections (3) to (5) of section 11C CA 1989, as inserted by clause 1.

9. Further, before making an order containing a contact activity direction or condition, the court must consider information about the person in question and consider the likely effect of the direction, or condition on him (section 11C(6) and (7) CA 1989).

10. Generally, the person who is to undertake the contact activity will be expected to meet the costs of that activity. However, the Secretary of State, or the National Assembly for Wales, as applicable, has the power to make regulations specifying the circumstances in which assistance may be given to pay these costs and the form and amount of any such assistance (section 11C(9) CA 1989).

11. Failure to comply with a contact activity direction will potentially constitute a contempt of court: this will be a matter for the court to decide. Failure to comply with a contact activity condition could be sanctionable in the same way as failure to comply with a contact order (see below).

12. If a court were to make an order containing a contact activity direction or an interim contact order containing a contact activity condition, the Department does not consider that this would interfere with a person’s rights under Article 6 ECHR. The person would not be precluded from having the contact issue determined by the court, so his right of access to the court remains.

13. If there were any interference with the Article 8 rights of such a person, in terms of requiring the person to spend time and, possibly, money undertaking a contact activity, it is considered this would not breach Article 8 ECHR. It would pursue a legitimate objective, would be in accordance with the law and would be proportionate, particularly in light of the matters as to which the court will have consider and to satisfy itself before it can make an order containing a contact activity direction or condition (see section 11C CA 1989, inserted by clause 1).

Clause 2—Monitoring and Facilitating of Contact Orders

14. Section 11F CA 1989, as inserted by clause 2, makes provision for a court to be able to ask a CAFCASS officer or Welsh family proceedings officer to facilitate or monitor compliance with a contact order, and to report to the court on such matters relating to the parties’ compliance as the court may specify. This would be for a specified period of up to one year.

15. Even if it were to be argued that having a CAFCASS officer or Welsh family proceedings officer facilitating or monitoring compliance with a contact order engages Article 8 ECHR, there would be no breach of that Article, because any interference with Article 8 rights would pursue a legitimate objective, in that the officer’s role would be to help ensure, or to check, that contact which a court has considered to be in the best interests of a child occurs. This would also be in accordance with the law and would be necessary in a democratic society, as ensuring that contact, which is in the best interests of the child, does take place.

22 See, for example, Re S [2004] I FLR 1279.
Clause 3 and Schedule 1—Enforcement of Contact Orders

16. These provisions give courts powers to impose an enforcement order on a person who, without reasonable excuse, breaches a contact order.

17. In considering whether to impose an enforcement order, section 11H CA 1989, as inserted by clause 3, provides that the court must obtain and consider certain information (section 11H(2), (3) and (5)) and must be satisfied as to the matters specified in section 11H(4).

18. Procedural safeguards will be put in place which will apply in cases where a court is considering imposing a sanction for a breach of a contact order. These safeguards will be expressed in Rules of Court and Practice Directions, made under existing statutory powers.

19. An enforcement order made under section 11G(3) CA 1989 may impose an unpaid work requirement. This work arises from a court imposed penalty and therefore is work or service which forms part of normal civic obligations. As such, the Department considers that it does not infringe Article 4 ECHR.

20. The matters which a court is required to consider and be satisfied about, coupled with the intended procedural safeguards, as set out above, will ensure that a person’s Article 6 rights are not infringed when a court is considering making an enforcement order.

21. On the specific issue of a “public hearing”, it is noted that caselaw indicates that it is not a breach of Article 6 ECHR to hold CA 1989 hearings in private.

22. Article 8 might be engaged if an unpaid work or curfew order (whether or not coupled with a compliance monitoring requirement) were imposed upon a person. As with contact activities, it is considered that any interference with such rights would pursue a legitimate objective, would be in accordance with the law and would be necessary in a democratic society. The various matters which a court will have to consider and satisfy itself upon before making an order imposing a sanction and the intended procedural safeguards are relevant here in concluding that these provisions are a proportionate interference with those Article 8 rights.

Clause 4—Compensation for Financial Loss

23. Section 11I CA 1989 as inserted by clause 4 will allow courts to make orders for compensation for financial loss. An order under section 11I CA 1989 would (if complied with) deprive a person of money, so Article 1 of the First Protocol falls to be considered. However, such an order would be made on conditions provided for by law, having taken into account the interests of the child concerned and the financial circumstances of the person in question. Further, it would be in the public interest, as its potential application would act as a deterrent from breaching a contact order, and its actual application would ensure that one person does not lose out financially as a result of the other’s breaching of a contact order.

Schedule 1: Paragraph 7 of Schedule A1 CA 1989: Breaches of Enforcement Orders

24. Paragraph 7 of Schedule A1 CA 1989, as inserted by Schedule 1 to the draft Bill makes provision for cases where an enforcement order is breached.

25. It is intended that the same procedural safeguards which will be available in cases where a court is considering a sanction for a breach of a contact order (as set out above) will apply in cases within paragraph 7 of Schedule A1.

26. The procedural safeguards referred to above will ensure that a person’s Article 6 rights are not infringed.

27. The Department considers that there will not be an infringement of a person’s Article 8 rights. The court will be sanctioning a failure to comply with an earlier, proportionate, enforcement order and that further sanction will itself be proportionate, as consideration will have to be given to the extent to which the first enforcement order was complied with.

Clauses 6 to 8—Adoptions with a Foreign Element

28. It is considered that Part 2 of the draft Bill is compatible with Convention rights. Although the effect of clauses 6 and 7 is that Secretary of State may impose a general suspension of intercountry adoption from a particular country, under clause 7(3) the regulations must make provision for exceptional cases where the proposed adopter is able to satisfy the Secretary of State that the adoption should proceed. In considering such

23 Pelling v Bruce Williams (Secretary of State for Constitutional Affairs Intervening) [2004] 2 FLR 823.
an application, the Secretary of State must take into account a person’s Convention rights, in particular Article 8.

February 2005

**Why not compulsory mediation? Background paper**

This paper is to provide background for the pre-legislative scrutiny committee on the Children (Contact) and Adoption Bill as to the reasons why the Bill does not allow for compulsory mediation.

*What is mediation?*

The aim of mediation in the context of parental separation is to help people find a solution which meets as many of their needs—and those of their children—as possible, and which everyone feels is fair. The role of the mediator is to help the parties try to explore possible solutions to the issue being disputed.

In-court conciliation is a similar process to mediation by which a court, often with assistance from a CAFCASS officer, attempts to help parties agree a settlement to the issue before the court. The difference between the two is that in-court conciliation is, in the main, not privileged. Mediation, on the other hand, is privileged.

*The position in the bill*

As currently drafted, the Children (Contact) and Adoption Bill would not allow courts to direct people to attend compulsory mediation.

New section 11E defines contact activities as an information session, programme, class, counselling or guidance session or other activity. The words “other activity” would not cover mediation because mediation is a different sort of activity to programmes, classes, counselling or guidance sessions. Anything under the heading of ‘other activity’ would have to be similar to those things.

*Why is compulsory mediation not included?*

The Government believes strongly in the value of mediation and other forms of alternative dispute resolution, in particular in-court conciliation. It is important that parents are encouraged to resolve disputes before entering into the courts system wherever possible or, where this is not possible to achieve, without recourse to full, contested court hearings. That is why the Green Paper Parental Separation: Children’s Needs and Parents’ responsibilities, made clear that we propose to:

> “review relevant rules and Practice Directions so that the strongest possible encouragement is given to parties to agree to mediation or other forms of dispute resolution, in order to ensure that all alternative means of resolving family disputes, short of contested court hearing, are fully utilised.”

This does not, however, go as far as proposing the introduction of compulsory mediation. There are several reasons why we consider this would not be desirable:

— There is a widely (though not universally) held view that mediation is by its very nature a voluntary process.

— There are potential human rights considerations in compelling parties to mediation. In the civil (non-family) case of Halsey in 2004 (which dealt with the issue of whether parties could be penalised in legal costs where they refused to mediate), the Court of Appeal stated:

> “It is one thing to encourage the parties to agree to mediation, even to encourage them in the strongest terms. It is another to order them to do so. It seems to us that to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their rights of access to the courts.”

— There are potentially significant implications for the public purse. Given the risk that compulsory mediation might have a relatively low success rate, and given that mediation attracts public funding in some cases, a substantial number of cases would be paid for twice; firstly at the point at which unwilling parties attend mediation and secondly, in order to meet the cost of the subsequent court case.

— Where compulsory mediation interventions were unsuccessful, they would also lead to delay in resolving court proceedings, which might in many cases be prejudicial to the welfare of the child.
— It has also been argued that forcing people into a mediation situation could actually be dangerous, especially where there are issues of domestic violence or child abuse, which a court might not yet have considered.

*February 2005*

**INTERCOUNTRY ADOPTION**

*General*

— On 1 June 2003, the UK ratified the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption. The Convention aims to prevent the abduction of, sale of or trafficking in children. The Convention requires that intercountry adoption happens only where it is in the child’s best interests, that all adopters are to be assessed and approved, and that no profit be made from adoption process.

— Intercountry adoption was rare in the UK until about 10 years ago but has increased since then. The number of applications in the UK has been steady for the last five years at around 300 a year.

*Process*

— Prospective intercountry adopters in England and Wales go through the same assessment and approval procedure as someone applying to adopt domestically. The assessment is carried out by a professional social worker of a local authority or Voluntary Adoption Agency (VAA). After the assessment is complete, an adoption panel considers the case and makes a recommendation as to whether or not the prospective adopter should be approved in respect of the adoption of a child from a named country. A senior manager at the local authority or VAA then makes a decision about the application, taking the panel’s recommendation into account.

— If the applicant is approved, the papers are sent to the intercountry adoption casework team in the Department for Education and Skills. In normal cases, the casework team:
  — Checks that the papers are complete, and that the applicant has been assessed in accordance with regulations;
  — Issues the certificate of eligibility to adopt and notifies the prospective adopter that this has happened;
  — Arranges for the papers to be notarised, legalised and translated as per requirements of the country that applicant wants to adopt from; and
  — Sends the papers to the foreign authority.

— Although the process up to this point varies in detail (such as whether documents need to be translated, whether documents need to be notarised individually/collectively), a certificate of eligibility is required in each case.

— The Secretary of State is then involved at further stages in the process, in an administrative function through the casework team. After the foreign authorities have matched the prospective adopters with a child, details of the proposed match are sometimes routed through the UK Government, but not in all cases. Applicants would then travel to meet the child and decide whether they wish to proceed with the adoption.

— Other administrative functions which the Secretary of State and the casework team carry out later in the adoption process include, for some countries, forwarding an invitation to travel visa from the child’s country of origin, or coordinating post-placement reports in the UK.

*Bill*

— Clause 6 makes statutory provision for the Secretary of State to impose restrictions on adoptions from a specified country—where the Secretary of State believes that because of practices in a particular country (such as trafficking of children or removal of children without proper consents) it would be contrary to public policy to further the bringing of children into the United Kingdom from that country in the cases specified in the clause.

— Clause 6 applies whether or not the country in question is a signatory to Hague Convention on Intercountry Adoption.
— Where the Secretary of State has declared, following consultation with the National Assembly for Wales, that special restrictions are to apply for the time being in relation to adoptions from a particular country she must:
  — publish her reasons for making declaration; and
  — publish the restricted list (that is of restricted countries) so that adoption agencies and the public are made aware.

— Clause 7 concerns special restrictions which are to apply. These will be set out in regulations, made after consulting the National Assembly for Wales. The regulations will not be country specific. The regulations will set out that Secretary of State is not to take any steps she might otherwise have taken in connection with intercountry adoption. These steps could be statutory (such as the making of an agreement with the child’s country of origin that the adoption can proceed under Article 17(c) of the Hague Convention) or an administrative function, not covered in statute (such as forwarding matching reports from certain countries).

— Exceptional cases will be allowed to proceed if prospective adopters can persuade the Secretary of State that general concerns leading to special restrictions do not apply in the prospective adopter’s individual circumstances. Exceptional cases could include a person seeking to adopt relative from restricted country or where the child’s sibling has already been adopted by the prospective adopters in question.

— Clause 8 allows the regulations made under clause 7 to provide for the Secretary of State to specify on the restricted list in relation to each country on it an administrative step which she would normally take in connection with the bringing into the UK of a child from that country. What this step will be will vary from country to country depending on the administrative arrangements. This might be forwarding a matching report or invitation to travel visa for example.

— Regulations may state that where a step has been specified for the restricted country, one or more conditions set out in regulations (such as issuing of notification to prospective adopter) must be met before a child can be brought into the UK from the restricted country.

— If conditions have been specified in the regulations, an offence is committed if the conditions are not met by prospective adopters. But if the step specified on the restricted list has already been taken at the time the Secretary of State makes the declaration, no offence is committed.

February 2005

INTERCOUNTRY ADOPTION—SPECIAL RESTRICTIONS

This note set out how the Secretary of State could come to a decision to impose special restrictions on intercountry adoptions from a specified country. The circumstances in which such an action may be appropriate may vary significantly. This note is therefore not exhaustive and should not be taken as a definitive account of how any or all such decisions may be made.

Concerns about intercountry adoption practices in another country may to come to the attention of the Secretary of State from a range of different sources. These might be raised through:

— The Secretary of State’s involvement in processing applications to adopt from another country.
— A British diplomatic post in the country or area in question.
— A Non-Governmental Organisation, including international organisation, domestic organisations and organisations based in the country or area in question.
— UK residents who have completed, or are part way through the process of completing, an adoption from the country or area in question.
— Intercountry adoption cases in UK domestic courts, where concerns may be raised about paperwork and proper transfer of parental responsibility.
— The Permanent Bureau of the Hague Conference.
— The representative or agencies of other governments.

Such concerns might be followed up through a process of gathering information and evidence. This could include obtaining further information from organisations and individuals who had raised concerns and detailed consideration of the intercountry adoption system and general situation in the country in question. This could of course vary depending on the country and circumstances in question.
The Secretary of State may consider the information gathered alongside possible options for addressing the issues raised. This could include the imposition of extra requirements or safeguards. For example all children to be adopted from Guatemala are DNA tested to ensure the person giving consent is related to them and the birth mother is interviewed to ascertain there has been no payment or coercion. If the Secretary of State were to be satisfied that the application of special restrictions would be the most appropriate option, she could then make a declaration, as set out in the draft legislation. Any concerns would be kept under constant review through a process of monitoring up to and beyond the point of the Secretary of State making any such declaration.

March 2005

Questions to the Bill Team

CONTACT ORDERS

1. What criteria will be used to assess whether providers of contact activities are “suitable” (new section 11C (4))?  
It is not intended that there should be any formally set criteria or qualifications, not least because it is important that courts should have flexibility to make use to as wide a range of activities and providers as is appropriate in particular cases. It will be for the courts to determine if a given provider is suitable, most likely with the advice of CAFCASS.

2. Would new section 11F (5)(b) apply to any indirect contact ordered by the contact order?
Yes.

3. Can the Government envisage any circumstance in which a CAFCASS officer or Welsh family proceedings officer would not be asked by the court to monitor enforcement orders? If not, is there any reason why the “may” in new section 11H(7) should not be changed to “shall”?
We agree that in most cases CAFCASS will need to be involved in monitoring arrangements where enforcement orders are made. However, we feel that it is still useful to offer the judiciary flexibility to take account of both available CAFCASS resources and whether the circumstances of particular cases suggest that such monitoring may or may not be needed. We would therefore argue that “may” should be retained, and discretion as to how to use this provision left to the courts.

4. Is the Family Resolution Pilot Project an example of the kind of contact activity envisaged in the draft Bill? Elements of it might well be. For instance, the information sessions designed to help parents understand the child’s point of view would be a good example of the kind of activity we intend should come under this heading.

ENFORCEMENT ORDERS

5. Does the Government intend the curfew requirement to be a facilitating measure that would simply enable contact to occur, or to be a punitive measure, or both?
Enforcement orders made in consequence of a breach of a contact order should always be used to help ensure compliance with a contact order, so they are never purely punitive (see new section 11H(1) Children Act 1989, inserted by clause 3 to the draft Bill). Insofar as they are punishment they are envisaged as punishment with a purpose, ie to address the parent’s failure to comply with the court’s determination of the child’s best interest. So, in short, the answer is “both”. We want courts to have flexibility over how they use the curfew requirement, and they might choose to use it either in a facilitative way or, to some extent, punitively, where the court is satisfied this is needed to secure compliance or to respond to non-compliance with the contact order.

6. What, if any, practical implications would there be if compensation for financial loss was treated as a contempt of court rather than as a civil debt?
Essentially, the practical effect would be that the sanctions available would be fines or imprisonment—that is, those available for contempt of court, rather than those available for civil debt. This means that we would be putting in place a regime which would run counter to the longstanding position established by the Debtors Act 1869, which states that, subject to certain exceptions, “no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money”.
To take this approach would also be to establish a system intended to punish the non-payment of the amount ordered by the court, rather than providing methods of ensuring that payment is made.

It is worth noting also that work is underway to provide new and more effective means for courts to enforce civil debts.

**Regulatory Impact Assessment**

7. What is the 2004–05 Government budget for contact activities (as defined in the draft Bill)? What information does the Government have about expenditure on those activities that are not currently funded by the Government?

In 2004–05 central Government is spending around £2 million on contact activities. We are putting more money into this, and have announced that the budget for contact services over the next two years will be £3 million in 2006–07 and £4.5 million in 2007–08.

8. The RIA is based in part on an assumption of 7,000 enforcement cases taking place in 2003–04. This assumption is derived from the findings of the DCA’s analysis of 300 cases which showed that approximately 50 per cent of contact applications are repeats, with one-sixth due to enforcement. The recent University of East Anglia study into 59 cases in Essex found, however, that only 29 per cent of cases were repeats, suggesting a much lower proportion of enforcement cases. How do you explain this difference? Will the Department be conducting any further research into this?

It is not surprising that there should be some differences in results obtained by studies in different parts of the country, which is why the DCA analysis considered three different courts in different areas. For this reason, the figures in the RIA should be considered illustrative (which is why a range of possible costs are shown) rather than absolute costings. The court file analysis conducted by DCA was a one-off study, and no further work is currently planned on this.

9. The RIA claims that between 150,000 and 200,000 parental couples separate each year and that there were 40,000 contact applications made to the courts in 2003–04. Do these figures relate to England and Wales? What sources/calculations were employed in determining these figures?

Both these figures are for England and Wales. The 150,000–200,000 parental couples separating each year is an estimate, based on the number of parental divorces published by the Office for National Statistics and an estimate for cohabiting couples separating from information from the British Household Panel Survey. The figure for contact applications is consistent with that published in Judicial Statistics, which are available via the Department for Constitutional Affairs website: http://www.dca.gov.uk/judicial/jsar03/contents.htm.

10. Does the Department have any plans to introduce the systematic collection of child contact statistics currently only estimated from samples, such as the proportion of cases receiving legal aid funding? If so, when will these be in place?

We have no current plans to introduce systematic collection of such statistics, though of course the availability of data and collection of necessary statistics is something which is kept under ongoing review.

11. On what basis does paragraph 25 of the RIA make the assumption that the draft Bill measures will reduce enforcement applications by up to 80 per cent?

This figure is taken purely as an illustration of a very high effect. The figures used for costs show a range based on a future reduction from 80 per cent down to 0 per cent. 80 per cent is taken as the top end of this range simply because it was felt to be highly unlikely that a reduction greater than this would ever be possible.

12. Can further explanation be provided regarding how the cost estimates were developed, what independent review has taken place and who the validity of the data used to derive the costs was ensured?

Cost estimates for the Bill show a range of possible costs based on the highest and lowest end of a number of variables, with several underlying assumptions. They are intended only as illustration, recognising that the actual costs will be dependent on how the new powers are used by the courts in practice, and the subsequent effect on the behaviour of parties.

For contact activities, the lower end of the range is based on:

- Assuming parenting class lasting four one hour sessions, at £15.65 per hour, attended by one parent.
- An 80 per cent reduction in the number of enforcement cases per year—1,400 cases.
- 60 per cent of cases are publicly funded.
- 20 per cent of enforcement applications result in a parent being referred to contact activities.
— Giving a cost of £11,000 a year.

The higher end of the scale is based on:
— Assuming parenting class lasting four one hour sessions, at £15.65 per hour, attended by both parents.
— No reduction in the number of cases per year—7,000 cases.
— 60 per cent of cases are publicly funded.
— 50 per cent of enforcement applications result in a parent being referred to contact activities
— Giving a cost of £263,000 a year.

For enforcement orders, the costings at the lower end of the range are based on:
— An average cost per order of £1,107.50, assuming half of the enforcement orders made are for unpaid work and half for curfew, using Home Office figures for the average cost of such orders.
— An 80 per cent reduction in the number of enforcement cases per year—1,400 cases.
— 60 per cent of cases are publicly funded.
— One per cent of enforcement applications result in an enforcement order.
— Giving a cost of £16,000 a year.

And at the higher end, the costings are based on:
— An average cost per order of £1,107.50, assuming half of the enforcement orders made are for unpaid work and half for curfew, using Home Office figures for the average cost of such orders.
— No reduction in the number of enforcement cases per year—7,000 cases.
— 60 per cent of cases are publicly funded.
— Three per cent of enforcement applications result in an enforcement order.
— Giving a cost of £234,000 a year.

13. Can the Committee be provided with a breakdown of the current costs associated with enforcement of contact orders (“do nothing” option), and how these are expected to change under the proposals? In addition, what are the most probable total savings to be made from the new regime?

If we do nothing, costs will continue to rise, as they are at present. The cost of the “do nothing” option is based on current costs, plus an assumed increase of 4.5 per cent a year, which is consistent with recent growth in costs.

As noted above, the aggregate of the proposals in the Parental Separation Green Paper is expected to reduce this growth, and possibly even to reduce the costs compared to the present. This will be a result of the wider framework of proposals intended to provide support earlier in the system and reduce the number and duration of contested court cases, meaning that enforcement measures will remain a last resort.

The following text, from the Green Paper RIA, gives an indication of potential savings arising from these proposals:

“Total case costs are assumed to be £195,376,230 based on 2002–03 estimates. This comprises £47,111,032 in court costs, less £7,661,652 in court fees, plus £113,858,850 in legal aid (this assumes an average cost of £3,500 per legally aided case, based on the Consumer Strategy work) and £42,068,000 in CAFCASS costs.

We would expect significant savings in court costs and legal aid expenditure. If we divert 60 per cent of cases—the maximum diversion considered possible—from the courts (against current figures) this would lead to a cost saving of £82.9 million per annum (consisting of net court costs of £16.5 million, £41.2 million legal aid and £25.2 million CAFCASS costs.”

March 2005
Additional Questions

1. The DfES recently launched an in-court conciliation scheme—the Family Resolution Pilot Project (FRPP). Can you explain the relationship between this scheme and the contact provisions in the draft Bill?

The Family Resolutions Pilot Project is a particular scheme designed to provide parents who have not reached agreement through mediation or in-court conciliation with additional support to enable them to do so. It is made up of parent groupwork (two sessions) and a co-operative parenting session to decide the practicalities of contact arrangements. As such, the Pilot as a whole cannot be classified as in-court conciliation, although, on its own, the final component (co-operative parenting) is similar. The Pilot is scheduled to run for one year (until Sept 2005) after which it will be evaluated before any decision is taken about national rollout.

Family Resolutions is separate to the provisions in the Bill. The contact provisions in the Bill are intended to give courts access to a flexible range of options that can be used in response to the differing circumstances of individual cases, rather than to point to any particular model. However, the Pilot's two parent groupwork sessions, which focus on raising awareness of the needs of the child and learning conflict management skills, are developing a model of parenting class which we intend should be a contact activity of the type the Bill makes available to courts. Irrespective of any decision about national rollout of the Pilot, these groupwork models themselves may be useful indicators of how to meet demand at local level, following court referrals.

2. The Committee's judicial witnesses have suggested that the Bill should make provision to reform the current law relating to Family Assistance Orders by:

— permitting them to be made without the agreement of all parties;
— allowing them to run for longer than six months; and
— permitting them to be made by a CAFCASS officer (requiring them to be operated by a CAFCASS officer and not a local authority).

Is the Government in favour of such reform?

We are in favour of reforming the way Family Assistance Orders are used, and consulted on doing so through the Parental Separation Green Paper. Responses to that consultation showed support for extending the time limit for such orders beyond six months and removing the requirement that they may be used only in exceptional circumstances. In our Next Steps paper, we made clear that we will legislate as necessary to make Family Assistance Orders more effective. Of course, while Section 16(5) of the Children Act 1989 presently limits orders to six months, courts can make a further order at the end of this period.

Section 16(1) of the Children Act 1989 already gives a court power to make a Family Assistance Order which requires a CAFCASS officer to “advise, assist and (where appropriate) befriend” a person named in the order, and indeed CAFCASS were involved in around 600 such orders last year. No legislative change is required for this. While we have not put forward proposals to change the provision that permits courts the alternative of asking local authorities to operate FAOs, we recognise that they are less often involved in their supervision than CAFCASS.

There are potential difficulties arising with removing the requirement that the person named in the order must consent to the making of a Family Assistance Order. Requiring a CAFCASS officer to “advise, assist, and befriend” someone who does not wish to be advised, assisted, or befriended might well be counterproductive in at least some cases, and is perhaps counterintuitive.

Any legislative change would of course have to consider the interaction between changes to Family Assistance Orders and the facilitation/monitoring role for CAFCASS which is provided by new section 11F of the Children Act 1989, as inserted by the Bill.

3. Clause 8(3) of the draft Bill makes it a criminal offence to bring a child into the UK in breach of a condition imposed by that clause, yet there is no similar express criminal sanction under clause 7 for bringing a child into the UK where there is a blanket ban on such traffic from a ‘restricted country’. Is this an error that needs correction?

The point raised here is not an error, but perhaps suggests that further explanation is required as to how the provisions in Part 2 of the draft Bill will work.

The basis for Part 2 is that the Secretary of State plays a part in processing intercountry adoption applications and should not play that part where she has concerns about the adoption practices in a particular country. Under current law, in all cases in which she is involved, the Secretary of State will normally issue a certificate.
of eligibility to the relevant foreign authority, so enabling the application to proceed. At the same time she issues a notification to the prospective adopters so allowing them to bring the child in to the United Kingdom, in specified circumstances. Without such a notification they breach a condition and so commit an offence. The provisions in Part 2 build on that.

Clause 7 does not impose a blanket ban as such on bringing children into the UK in the cases set out in clause 6(2). However, the special restrictions set out in regulations under clause 7 will in general terms stop the Secretary of State from processing intercountry adoptions in respect of the restricted country in all but the exceptional cases.

As the Secretary of State will no longer be forwarding documents which are necessary to the process, the effect of the imposition of special restrictions should be that (save for the exceptional cases) new applications will not be processed and those in train will (if the Secretary of State has any further part to play in them) be halted.

However, if a prospective adopter were able to get round this in some way, perhaps by obtaining for themselves necessary documents which ordinarily the Secretary of State would forward, the special restrictions would in themselves be ineffective. Clause 8 therefore seeks to make the special restrictions enforceable by imposing conditions which are linked to the special restrictions, and breach of which by a prospective adopter would be an offence.

Clause 8 achieves this by saying that the clause 7 regulations may provide that in respect of a restricted country the Secretary of State may specify a step which she would normally take in processing an application in respect of that country. This of course will be a step which the Secretary of State will not take while the country is restricted. Conditions may then be imposed on prospective adopters in relation to that step and if a person brings a child into the United Kingdom in breach of the condition then he commits an offence. In this way, the special restrictions bite on prospective adopters and become enforceable against them.

So for example, the Secretary of State might in relation to country X forward a matching report to the prospective adopters. When country X is declared a restricted country the Secretary of State stops forwarding matching reports and it will be an offence for prospective adopters to bring a child in to the United Kingdom from country X for the purposes of adoption unless they have met the condition of having a notice from the Secretary of State that she has forwarded the matching report. In most cases the adoption can and will not proceed because the imposition of the restriction means that the Secretary of State does not forward matching reports in connection with adoptions from country X. But the imposition of conditions, and the attached offence, means that the prospective adopters cannot, without committing an offence, get round the restriction if they are able to obtain the matching report from another source, because they will then be in breach of the condition. Of course, if they have been able to satisfy the Secretary of State that theirs is an exceptional case, the matching report will be forwarded to them by the Secretary of State, they will hold a notice to that effect, they will therefore meet the conditions imposed by virtue of clause 8(1)(b) so not commit an offence.

March 2005

International comparisons: enforcement of contact order equivalents in Australia and Canada

This document has been prepared by the Department for Education and Skills as background information for the committee undertaking pre-legislative scrutiny of the Children (Contact) and Adoption Bill.

Information on Australia is drawn from resources available via the Australian Government’s website, and material on Canada is taken from Overview and Assessment of Approaches to Access Enforcement24.

Australia

The Australian system of family law uses an approach not dissimilar to our own, and has much of its basis in the Children Act 1989. They have considered a number of similar issues to us, including whether there should be a presumption that children will spend equal time with each parent.

The Family and Community Affairs Committee of the House of Representatives reported on this issue at the end of 2003, and did not recommend a presumption in favour of “joint custody” or equal time. The committee’s report found that it was better to consider each case individually than to rely on any kind of formula.

There has been substantial consideration of the Australian model by the UK Departments for Education and Skills and Constitutional Affairs, including discussions with senior members of the Australian judiciary.

24 Overview and Assessment of Approaches to Access Enforcement (2001), Dr Martha Bailey, as presented to the Department of Justice, Canada.
In response to the committee’s report, the Australian Government has proposed the creation of “Family Relationship Centres” (FRCs), which will help parents to work out post-separation parenting arrangements by helping them develop a parenting plan, and acting as a source of information on parenting issues, providing a gateway to other family support services. These centres are to be run by non-government organisations.

In terms of enforcement, the Australian Family Law Amendment Bill 1999 put in place a three stage process, ranging from preventative measures to actual sanctions. In essence, this is not dissimilar to the approach proposed in the Children (Contact) and Adoption Bill, which also provides the courts with a range of facilitative and enforcement measures.

Stage 1
Stage 1 involved provision of information and relevant programmes to help separating parents understand their changed roles and responsibilities. Parties are given information about the range of such programmes that is available.

Stage 2
At stage 2, parties are directed to a facilitative parenting programme aimed to address the underlying reasons for breach of court orders.

This approach is used only for the first time the order is breached, and only if the breach is not serious, unless there is a clear reason to think further attendance on parenting programmes of this type is warranted. Attendance on such a programme is compulsory providing the person concerned is assessed as being suitable for the programme.

If the court thinks that both parents will benefit, it can order the other both parents to attend the programme, not just the one who was in breach.

Stage 3
At stage 3, the focus is on enforcement action. This stage is reached where there has been a serious breach, or repeated breaches, of a parenting order.

At this stage, the court is able to choose from a range of sanctions including imposition of a community service order, a bond, a fine, or, in very serious cases, imprisonment.

Canada
Canadian law requires that contact enforcement laws and decisions should protect the rights and best interests of the child. Laws vary across Canada’s provinces, and the following are a number of the disposals available, not all of which are available in any given province:

— Ordering either parent, of the child, to attend and education programme or mediation.
— Ordering a parent who has denied contact to provide “compensatory access”
— Ordering one party to pay financial compensation for expenses incurred as a result of denial of contact or reimburse the non-resident parent for expenses incurred as a result of the access denial. However, in cases of harassment, the court can deal with frivolous or vexatious applications by prohibiting the parent from making any further applications without leave of the court.
— Power authorise a person entitled to contact, or someone acting on that person’s behalf, to apprehend the child to carry out the contact order. Jurisdictions which use this power also empower courts to direct a law enforcement officer to locate, apprehend and deliver the child to the person entitled to access.
— As in England, contempt of court proceedings are also possible where an order is breached.

All of these powers, of course, fall within the context of the general requirement to protect the best interests of the child.

March 2005
Examination of Witnesses

Witnesses: Margaret Hodge, a Member of the House of Commons, Minister for Children, and Lord Filkin, a Member of the House of Lords, Parliamentary Under-Secretary of State, Department for Education and Skills, examined.

Q325 Chairman: Can I welcome the Parliamentary Under-Secretary of State and the Minister for Children, Margaret Hodge? Thank you very much for coming today. It has been a very interesting few sessions so far on the Bill. One of the things that has been coming up on a number of occasions is how do you think that this Bill is going to ensure that mediation happens? We all agree that we do not want these cases to get into court in the first instance, but that does require mediation and we cannot see anything in the Bill which will necessarily make mediation more likely than it is now.

Margaret Hodge: We are not making mediation of itself compulsory and we have good reasons for that which I can go into. However, we are putting strong signals into the system at every part we can to encourage couples to mediate. For example, in the Bill itself, whilst we are not making mediation compulsory, we are giving judges the facility to make sure that those couples go to an information meeting where they are told about mediation, so information about mediation will be compulsory. Whether or not they then engage in mediation will not be compulsory. The broad explanation is simply that we think mediation only works if it is voluntarily and willingly entered into by the couples.

Q326 Chairman: I think there is an understanding of that. There are resource implications there which we will come back to but you are relying on a structure which will underpin this new Act, as it would become, in some ways which will make mediation more likely to happen. What we are genuinely worried about is why should it happen and what would be different.

Lord Filkin: Quite properly, the Committee is looking at the Bill and the Bill sits in the context of the Green Paper and the wider set of changes. You know the Green Paper context so I will not go into that detail. There are probably three points. There is a whole range of mechanisms in the Green Paper where we are trying to make mediation or out of court conciliation or in court conciliation, not actually in the court chamber conciliation, more likely to be the preferred route. The Bill is relevant in two respects. If enforcement is seen to work in more cases, it makes playing it long less of a sensible strategy. I am not implying that the participants are necessarily always rational in this sense but you do not want the belief to be about in the system that if you do not obey the courts you get away with it, because that is corrupting to the court but, more importantly, it is corrupting to those who argue you should be trying to sort it out, outside court. The second and probably more fundamental way in which the Bill is relevant is, although it tends to be seen as a Bill about enforcement, it is a Bill just as much about facilitation. It is giving judges the powers that they asked for to be able, prior to a final decision, to direct one or more of the parties to other processes. I would want to emphasise that element because the judiciary were aware often that they could keep on getting CAFCASS reports and hearings but they needed something to shift the behaviour of the participants rather than having another court hearing. Therefore, the powers they have in the Bill to direct to a range of other non-court settings, in our view, ought to help reinforce the mediation message that there are other things that need to be done that the court, for all its strength, cannot do itself.

Q327 Chairman: Can I make sure I understand the process that you envisage happening where, the case having got to court, the judge might ask for CAFCASS to be involved. CAFCASS then might make suggestions for certain types of mediation activity outside the court and that would be put to the couple by the court or by CAFCASS?

Margaret Hodge: We all want more mediation. The issue in question is do you achieve that by making it compulsory to couples who come before the courts. Our view is if you put it in as an expectation right the way through the system, the evidence appears to be that more mediation does take place. For example, Essex is given as one example where there is an expectation that 75 per cent of cases go through conciliation or mediation and do not end up with litigation in front of courts. We are putting expectations in. We are giving judges a power they asked us for which is the power to direct individuals to learn about what the mediation process entails. We are doing everything short of saying, “You have to compulsorily go off and mediate” because we think that is counterproductive. Your judgment as you take evidence may be different from ours and we will be interested in hearing about that, but that is the view we have taken in putting together the Bill.

Q328 Chairman: Baroness Howarth has declared an interest as vice-chair of CAFCASS and therefore she will not be participating in these questions at this stage.

Margaret Hodge: She is playing an incredibly valuable role.

Q329 Chairman: Can I ask a slightly technical question? Contact activity directions can only be made where the making of an order is opposed. This is the new section 11A(1)(b) in the Bill. We have been
told that this requirement may create a technical loophole that could be exploited. Are you aware of this and would you have any objection to the removal of the provision?

Margaret Hodge: I have heard that this has been a concern of the Committee. What was raised with me, which seems to be perfectly valid in the good things about pre-legislative scrutiny of a Bill, is that it could well be that, in the way we frame the legislation at the moment, you do not want to go off and look at circumstances where there is no dispute, so where a contact order has been agreed; but where the terms of a contact order may be disputed rather than whether or not there is a contact order per se. In those circumstances it may be appropriate to have reference to other facilities in the Bill. There is a technical loophole that you have drawn our attention to that we will think about. Hopefully, you will give us some ideas as to how to amend it. We will take it on board.

Chairman: We might even amend it before it gets back to the House.

Q330  Ann Coffey: I think you heard my question about the welfare checklist including a requirement for the courts to have regard to the importance of sustaining a relationship between the child and the non-resident parent. What would your objections be to having that included on the checklist?

Margaret Hodge: I have looked at the welfare checklist. Presumably, you have too. There is a bit in it somewhere which says that you have to be careful how capable each of the parents are of meeting the needs of the child, something like that. Yes: how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs. There is a reference already to parents in there. If you put in a further reference saying that it would be a good idea for non-resident parents to have access, I think you would be muddying the waters. It is the usual argument about muddying the waters over the paramountcy of the interests of the child. It would be something you would have to look at, not just in private law cases but in public law cases. I think you could then open yourself to the question of, if you are putting that in, should you also put in things about safety where domestic violence is an issue and therefore the safety of the child is at risk and there should be a presumption of no contact. I think that we are very clear in the UK legislative framework that the paramountcy of the interests of the child is there. That is reflected in the way the welfare checklist is described and I do not think we want to muddy that. You, presumably, have heard from a range of witnesses. That does not mean that case law does not affirm—indeed, it does—that contact with both parents post-separation and divorce is in the interests of the child in most cases where it is safe for that to exist.

Lord Filkin: I do not differ from Margaret on this. There can be no doubt that you want to do nothing to muddy the paramountcy of the child issue and the child’s interests as being paramount in the court. The evidence of the President going to the Constitutional Affairs Select Committee was very clear in that respect. To be candid, we had quite a debate when we were producing the Green Paper about whether it was useful to write into statute what was already in the common law, because the common law position in terms of exactly this issue is very clear. The Court of Appeal judgment is very powerful on this. It is absolutely clear that, except with very clear evidence to the contrary, it is in the child’s best interest to have a meaningful relationship with both. For that reason, we did not think that there was any real benefit in putting it into statute. This is a variant of that debate effectively. It is putting it not into statute but into a welfare checklist. The Constitutional Affairs Committee have come out with a similar recommendation in that respect and we will, as ever, reflect on that. It is part of a wider debate which is how do you get across into society the view that it is unacceptable for one party, whether it is a male or a female, to frustrate their child’s contact with their parent. That is a really significant question for government, for the judiciary and others. You push conventional thinking and it should be seen as unacceptable to do that, as it is with drink driving. We are not there yet at present, but we ought to be thinking about how we promote a debate like that because in parliament you are trying to shift values as well as law.

Q331  Ann Coffey: I think you were here and you heard the previous witnesses talk about clause three and strengthening that from taking account of the welfare of the child to reiterating the paramountcy principle. Do you think clause three, in that phrase taking account of the welfare of the child, weakens the paramountcy principle because it is not repeated there?

Margaret Hodge: I did hear that exchange and I thought it was a bit odd because you have the paramountcy of the child’s interest where you are reflecting on a decision which impacts on the child, so deciding residence or contact is all about the child and you take the child’s interests as paramount. If a parent breaks that order and therefore has to go back to court, the court is then not considering the interests of the child; it is considering the fact that the parent has failed to abide by the order. It is a bit like saying you would never send a parent to prison for stealing or whatever because to do so would undermine the paramountcy of the interests of the child. I just do not see it. What you are then doing is
looking at the culpability of the parent in relation to a flagrant failure to abide by the contact order. The contact order is the thing that has the paramountcy of the interest.

Q332 Ann Coffey: Some of the discussion this morning was around that mechanism where you are making changes or you are doing enforcement. You have to go back to look at the issue of the welfare of the child because if you are doing something that impacts on the relationship of the resident parent that principle has to apply. 

Margaret Hodge: It is where you strike that balance. If a parent is in breach of an order from the court, you would have regard to the interests of the child but would paramountcy of the child’s interests be as important as when you are making the original contact order? That is a judgment. Otherwise, there would never be a case in which the parent would have to abide by the contact order, because they can always plead, “It is not in my interest ever to in any way be brought back to court for failure to comply with that.”

Q333 Baroness Nicholson of Winterbourne: I have a quick supplementary on the welfare checklist. A number of divorces now, because of the problems of inter-country adoption, impact upon children coming from foreign countries. Should such a checklist contain some sort of consideration for the courts to enable reopening of the contact with the child’s original family, siblings and parents, if the divorce means that that child indicates its preference to do that, to return to its country of origin? Might that be possible or desirable? 

Margaret Hodge: Can you repeat that? I am really sorry. I do not follow. If a child is taken out of the UK for adoption?

Q334 Baroness Nicholson of Winterbourne: No, Minister, the other way around. Inter-country adoption means a child coming into the UK for adoption here. As I understand it—and there are not many statistics available—certainly across Europe there are now a growing number of cases where those adoptions break down, a higher prevalence than in national adoptions. They are more complicated and more difficult. Perhaps those two break down parents move or separate completely in a number of cases like this. I merely wondered, with regard to the welfare checklist point already raised, whether in the Children’s Act those children’s needs to resume contact with their biological parents or siblings or to return to their own countries, a wish that is frequently expressed as they get older, either for a visit or for good, if the divorcing parent does not wish this to happen that child is in a very weak position to have its wish fulfilled or listened to. This is not in the common law because it did not used to happen but I wondered if this could be a point that might be thought of. 

Margaret Hodge: The best I can do is reflect on it because it is a coming together of the adoption legislation with legislation around access and contact post-separation and divorce. With the international dimension, that is incredibly complicated. If I may, we will look at the question and I will write to the Committee with a considered view, because it looks to me rather complicated.

Q335 Baroness Gould of Potternewton: I wonder if I might come back to the point about breach of contact. I am still not quite certain how that process would work. You talked quite rightly about the culpability of the parent and that is the real reason for breaches but you also have to consider why that has happened. There may be changed circumstances. In those instances, surely the interest of the child has to be paramount, as it was in the original decision. I am not quite certain why there is this weakening, if you like, of the interest of the child. 

Lord Filkin: If there were a change of circumstances which meant, in the view of the resident parent, say, the contact order had been made inappropriately—for example, the resident parent felt that the non-resident parent had molested the child—the remedy there is that parent goes back to court and seeks a variation to the contact order, putting that information before the court. It cannot be just that they make the judgment of themselves that it is no longer acceptable to obey the court order because they do not think X, Y and Z reasons make it so. That is the proper remedy in that situation.

Q336 Baroness Gould of Potternewton: When that is happening, are we certain in those circumstances that the interests of the child would be paramount? 

Lord Filkin: It would be an issue not about the enforcement of the order; it would be an issue about what should be the right contact in the interests of the child. Say it was a mother. On the reapplication of a mother to court to say the father has done this, the court would then only look at the interests of the child in that situation, because they were judging what was an appropriate level of contact effectively on appeal.

Q337 Baroness Gould of Potternewton: The problem I have personally with it is that the impression one gets from the legal standpoint is they will look at it from a legal point of view—this is a breach of a decision of the court—and not so much take the interest of the child into account. Somewhere, I think we have to be absolutely certain that that does happen.
Margaret Hodge: In making the initial order, the interests of the child are paramount. In considering a breach of that order, you ask yourselves the question as we have: should the interests of the child be paramount or should we have regard to the interests of the child but with the breaching of the order being the key issue. If you really wish to have a sensible law and both parents complying with orders of the court as to contact and residence, you cannot in breaches of those orders have the interests of the child somehow take precedence over the failure of the parent to comply. You have to have regard to it but not have it take precedence. That does not stop people going back to court and seeking a new contact or residence order if circumstances have changed and the child’s interests may be different. It is a difficult one.

Q338 Ann Coffey: Some of the concern is that you have this principle, which is the paramountcy of the interests of the child, which goes so far and then you come to something and it stops and it becomes “taking account of”. Clearly there is going to be a huge number of measures available to a judge if there is a breach of the order. Maybe we were just thinking that at that point, if the paramountcy principle was there, a judge might look at one order rather than another, or look at the kind of penalties that were imposed and the effect on the child, for example, locking up the mother for 24 hours as opposed to unpaid work, so that even at that point when they are making decisions they are taking account of that paramountcy principle of the welfare of the child rather than thinking, “There has been a breach of this enforcement order. We are going to have this penalty or that penalty”.

Lord Filkin: It is a very important but nice point. I cannot recollect as to what extent we consulted with the judiciary on this point. I think we did, didn’t we? Margaret Hodge: Yes.

Lord Filkin: My recollection is that the view that Margaret and I took on it was that you had to have it paramount in the petition on the order but it should be a material consideration when the judge is making a decision on a breach. However, if you make it paramount you so fetter their discretion that they cannot effectively exercise as much scope on the utilisation of the enforcement sanctions that they have available to them so that you take away the benefit that this Bill is giving. None of us says that they have not got to take the interests of the child into account but it is not making that so paramount that they cannot in a sense balance the interests of the child against the importance also of trying to promote the contact which itself is in the interests of the child; otherwise they would never have made the order in the first place.

Margaret Hodge: One of the reasons we are where we are in considering new legislation is this strong feeling in the real world of people who are going through this process that contact orders are meaningless, so we have to give them meaning. Where you are right is that the current set of sanctions open to judges is so extreme that they tend to have regard to the interests of the child and decide that the sanction is too extreme. Locking a mum up does not actually help the child and will not presumably facilitate much contact, and that is why we have given this rather broader array of sanctions which judges could employ. We are here because some people do not comply.

Chairman: I want to move on now to enforcement but that discussion is very important. We will have to spend some time on it when we are deliberating on the evidence we have heard.

Q339 Jonathan Shaw: Can you tell the committee about the threshold of proof if an enforcement order is breached? Is it going to be civil or criminal, so that if a curfew order, for example, is breached, will it be the civil or the criminal levels in which we have to determine whether that order has indeed been breached?

Lord Filkin: I assume it will be a civil standard because it is a civil court. I have had second thoughts. The answer is that it will be a criminal standard.

Q340 Jonathan Shaw: You obviously thought long and hard about that, Lord Filkin! It is very reassuring for the committee to know that you are fully on top of this particular issue. It is funny, is it not, but it is a serious point also, is it not, if it is going to be “beyond all reasonable doubt” that the mother was etc? Can you tell us what your thinking was in discussions about how these are going to work? I anticipate what Margaret Hodge will say, that this will be decided locally.

Margaret Hodge: In the courts.

Q341 Jonathan Shaw: If we have got unpaid work what is that going to be? We have heard examples where it might be working in a playgroup, it might be clearing up dog poo, someone suggested. What are we talking about here? What was your thinking and how is that range of options going to be worked up so that they will be available to the judges? It is not going to function before it has already begun, as it were, if the judge says, “You will do so many hours’ community service”, and then the CAFCASS officer stands up and says, “That is not available, sir”. Tell us your thinking behind that.

Margaret Hodge: It may be helpful if we tell you how we came to this. What the judges said to us was, “We want some community based orders to sit alongside our powers to fine or imprison”. There is a list of 12
community-based orders which exists in the 2003 legislation. We went through those. There were two that appeared relevant and, as you will know, there has been a debate about whether one is or is not relevant. One was unpaid work. The other one was the issue of the curfew. Those seem to us the two and it may be interesting to see whether you reflect that we have chosen the right two or whether we ought to add to the list. Unpaid work we have deliberately not defined. I suppose the furthest we have gone is to say that it ought to be, to the extent that this is not just about punishment but also about facilitating contact between both parents and their children post-separation and divorce, relevant to that facilitation. We are under no doubt that as legislation takes place we will think of better examples than dog poo or children centres. I had always thought about working in a children’s home, seeing what it was like for a child to live outside a loving family entirely. That might be a good learning process. We will add to that list and no doubt you will too. I share in a sense the background to this because when you look at community based orders they are pretty limited and this is where we are trying to respond to what judges told us. This is the best we have come up with so far.

Jonathan Shaw: On the curfew orders there has been disagreement between the legal witnesses that we have had in front of us. One group said that they thought that a curfew order would be put in place if it was to help facilitate contact. Another very eminent legal witness said that she would use it as a punishment effectively: “You will not go out Saturday evening to your club [or whatever] because you have breached the contact order”. What is your thinking as to how this should be applied?

Lord Filkin: If it was a choice between those two our position would be absolutely clear: we would vastly prefer a curfew if it was a measure that remained in the Bill to be used in a way that facilitated contact, for reasons that are in a sense obvious. That is what it is all meant to be about. We have got pretty open (I would not go so far as to say agnostic) minds on this, but if we found that there were examples where we could think that the use of a curfew did in practice mean that the contact was more likely to happen, I think we would be persuaded it was worth keeping it in. As to thinking of the curfew and more extreme forms of monitoring the curfew just as a punishment—there are other sanctions that are available. An example that we thought of in that regard would be if the father was meant to come round by the order to collect the child at nine o’clock every Saturday morning and to take the child out for whatever time. If the mother persistently did not answer the door or went away on that day one can see that the curfew, whereby she was ordered by the court to be in and to answer the door and hand over the child, would directly bear on facilitating the contact, and in that circumstance one would believe that that could be useful.

Jonathan Shaw: You bring me on to monitoring, which is obviously going to be an important part of CAFCASS’s work. How do you envisage that working and do you think that there will be other agencies involved, particularly in terms of the enforcement notices?

Q343 Chairman: The whole question is around the practicality of this.

Margaret Hodge: It is, is it not? We have been looking at that. That is slightly why we feel some concerns about the curfew facility because we do not want a disproportionate response to the breaching of the contact order and tagging feels to us disproportionate. I do not know how you feel as a committee. There could be other agencies who do the monitoring. CAFCASS could do it. We could ask the police to do it. I do not think anybody would be very keen on that. You could monitor it very lightly and just look at breaches of it so that if you take Geoff’s example of the curfew order which instructs a woman to be in on Saturday morning so that the father can come and collect the child, you do not necessarily have to monitor. If the mother is not in that is deemed a breach of itself. There is a time when the child cannot be picked up. Not all curfews are necessarily heavily monitored in a way that tagging implies and seems to us rather disproportionate. It is a worry and we are really interested in the committee’s views on that and that is one of the benefits of pre-legislative scrutiny.

Lord Filkin: One of the central reasons why we put that in the Green Paper and in the Bill was the situation where, as a result of an application to the court by a non-resident parent for contact with their child, the current situation had been that the court made an order and then the court completely shut up shop and had no knowledge of what happened whatsoever. All of the burden was then placed on the parent who had not had the benefit of the order in practice because it had been breached to go back to their lawyer, to go back again to the court, often to wait two months or so to get a court hearing, and then, three months later, there they were before the court telling the judge for the first time, “You know the order you made? Nothing happened”.

Q344 Chairman: And that is where a lot of the damage happened in terms of the relationship with the child and also the anger of the non-resident parent.

Lord Filkin: Exactly. We wanted a system where, if the order was breached, there was more energy by the system itself, by the CAFCASS officer reporting back to the court, “This contact did not happen. We need
to get it back into court fast”. That seemed to us to be in the interests of—“justice” is a posh word but in the interests of what the court was about, which was the child having contact with its parents.

**Q345 Chairman:** So what you are saying is that, instead of the parent going back, the CAFCASS officer might go back and say, “This is not working”, and then the court would have to decide how to enforce the order?

**Lord Filkin:** Indeed. It allowed that provision for the court to be informed very fast that the order had not happened. There is a bit of an advantage as well because clearly the CAFCASS officer, finding that it had not happened, might do a bit of “What on earth is going on here?”, and ring up the mother, was there a reason, was there a problem, in other words trying to do a bit of broking. You do not want to go back into court needlessly if it is genuinely because of some muddle or mistake, so there is the idea of the CAFCASS officer through the monitoring person knowing what is going on and either being able to sort it or to make sure that the court is brought back into it again, because to wait three months is quite dreadful in that situation.

**Q346 Chairman:** I am inclined to think that tagging is a non-starter but in the extreme case have you thought about things like weekend prison?

**Margaret Hodge:** We have thought about weekend prison, but again we think prison is probably the last resort, which is why it has been so rarely used.

**Q347 Chairman:** It might be a last resort before a normal prison sentence, might it not?

**Margaret Hodge:** Except that it is not usually used in contempt of court cases and this would be a contempt of court, so I am not sure it is appropriate.

**Lord Filkin:** A further answer to that is that that is a focus on enforcement when the order has not been obeyed. There is a bit before that we are still giving reflection to, which is what one might call really hard end cases, by which I mean cases where there is something in the make-up of one or both of the parties which really is seriously getting in the way of them being able to understand what the interests of the child are. Therefore, before one gets to an order and enforcement if that fails, we are thinking about the fact that this Bill gives powers to direct one or either of the parents to almost any other facility out there as opposed to going round and round the circuit of court hearings. We are thinking with others in the world out there about what that might imply in terms of more intensive forms of intervention that might be a useful facility for the court to direct some of these most serious cases to. It sounds a bit abstract but what I really mean by it is that although the Bill talks about a range of things that the court can refer to, what sort of service, if it was out there, would be helpful to shift the behaviour, understanding and attitudes of one or both of the parents that would be useful for the court to refer to? There is a bit of almost supply side development there that we think is necessary to enrich the facilities to help the court to move the parents towards an agreement that will stick rather than just how do we wave the big stick of enforcement on them. I hope that is helpful.

**Chairman:** That is helpful.

**Jonathan Shaw:** I think what you have outlined, Lord Filkin, is very helpful and it would be very interesting to see how that would all work, because it would be a lot of work and therefore it would be quite resource intensive. We have asked all of our witnesses whether they consider the new set-up will mean that there will be additional resources, and you will not be surprised to learn that they do all think that they will need more resources and your example perhaps confirms that.

**Q348 Chairman:** Can I interrupt to say that we are going to come to the report in a moment.

**Lord Filkin:** Can I respond directly on that because it is relevant? If the alternative is that those couples constantly go back into court and one of them is legally aided and they have repeat application after repeat application, the legal aid bill and the cost to the state and society are mounting. If you could have a more effective intervention rather than repeat court applications it could be cheaper.

**Chairman:** We will come back to that in a moment.

**Q349 Ann Coffey:** I think the example you gave of how a curfew order might work or a direction for a parent to be somewhere rather than somewhere else so that contact with the non-resident parent could be facilitated, I can see that as a way of facilitating contact, but also, of course, curfew orders can be used as punishments. Do you see a tension between the idea of these orders being part of a facilitating process and being part of a range of measures that judges have to use in a punitive way?

**Margaret Hodge:** Funnily enough, I saw again from the questioning you had had earlier that the distinction between punishment and facilitation is a difficult one, is it not, because one hopes that the threat of punishment in itself becomes a mechanism for facilitation. That is the argument, whether it is right or not. It is right in some cases; it is not right in all cases is probably the best answer we will come to. I would love to think that all the elements of the Bill are all about facilitation and I think it would be naive if we were to say that, so that it probably meets both purposes but the purpose of punishing is in order to facilitate.
Q350 Baroness Gould of Porternewton: Coming back to this question of resources, the draft regulatory impact assessment says that CAFCASS, with all its new duties, all its new responsibilities, will not require additional resources and, “The actual monitoring of these will be carried out by those directly involved in their administration, who will in turn notify CAFCASS”. It is still a bit confusing as to how in fact, if there are to be all these extra jobs on CAFCASS, that can be done and be resource neutral. Margaret Hodge: I completely share the committee’s concern. The additional resources that we have put into CAFCASS are immense. It started off, you can argue, as the DCA committee did argue, that it was under-resourced when it was set up. In 2001 it had £69 million. This year it has got £107 million, so there has been a massive increase in resources. As I look across the resources in our directorate we are not going to have room for more. When I eyeballed both CAFCASS and the judiciary on this issue and said, “Can you do this within the existing resource framework?”, they assured me that the change of direction, the reduction in report writing, which hopefully the judiciary’s new procedural note that they put out will lead to, and earlier intervention and therefore fewer cases ending up in the courts will facilitate a release in resources. We will only bring this legislation in when we are clear that the resources are available and that requires both the judiciary and CAFCASS to stop doing some of the things they are currently doing. I am absolutely clear about that.

Q351 Chairman: So it could be phased in, could it not? Margaret Hodge: It could be phased in but I am really worried about introducing new legislation, raising aspirations and then not being able to deliver.

Q352 Baroness Gould of Porternewton: I think that is very helpful. One of the points that we made this morning to judges was that the Green Paper says that there will be a reduction in the number of cases. They argued that that would not necessarily be the case but that in fact there might be more cases because most parents give up the idea of contact in about two years. If they feel it is going to be easier to establish their contact rights then they are going to go to court, so they think there might be more cases rather than less, so cost comes in again. Margaret Hodge: If that is the case we will have to reflect on that. Where Geoff is absolutely right is that if we are correct in the direction of travel that we are engaged in, which is to get this earlier intervention to reduce the number of cases that are litigated within the court, then there ought to be room for a redirection of resources to support all the interventions that we want particularly out of CAFCASS. We have generously resourced CAFCASS and it has to be a change of emphasis in the work that they are doing which has to be directed from the way in which the judiciary operate within the courts.

Q353 Ann Coffey: With regard to early intervention, the government is putting a huge amount of resources into Early Years and Children Centres roll-out. One of the universal services, as I understand it, of children centres is going to be support for parents. Do you see children centres as a way of intervening in relationships that are going wrong at the point that they are going wrong and parents talking to each other and discussing things to prevent this terrible deterioration that occurs? Margaret Hodge: A hundred per cent right the way through. If we can provide better support to parents to deal with some of these crises in their lives that ought to prevent so many relationships breaking down. We are also looking at the issue of whether or not we can use children centres, for example, for contact centres so that we grow the facilities of contact centres to enable contact where that is an appropriate means of doing it. Just out of interest, one of the early findings out of the Sure Start programme is a massive decline in post-natal depression. To the extent that that relates to relationship breakdown, which it does, we are beginning to get indications that this much earlier support for families is paying dividends.

Q354 Chairman: On the resource issue I should tell you that the Green Paper I know is neutral on resources but everybody who has been to see us thinks it is not. Margaret Hodge: That is why I was so firm.

Q355 Ann Coffey: Turning to grandparents, you probably heard the evidence that was given this morning. Do you think that grandparents should be included in the category of those who may apply for a residence or contact order without first having to obtain the court’s permission to do so? Lord Filkin: The short answer is that we are currently reviewing that issue and we will be getting advice from officials and Margaret and I will then be looking at it and seeing the pros and cons of making a change. Margaret Hodge: We are trying to get less litigation in the courts. The idea that another four adults could litigate where there is separation and divorce I look at with trepidation. There is another issue around grandparents where there are situations where parents break off contact with the grandparents, for all sorts of reasons, and do not let them see the grandchildren. Do we really want that litigated in the courts? Whilst I completely understand how distressed many grandparents feel if
they lose contact with their grandchildren it is a really difficult issue.

Q356 Baroness Nicholson of Winterbourne: Minister, the add-on part of the Bill is on inter-country adoption, as I see it a very sensible provision. Could you tell us a little bit more about the criteria that will be used or are envisaged to be used when you will impose the restrictions on public policy grounds under clause 6 to prohibit inter-country adoption from specific countries where malpractice of some sort or another is deemed to be happening? Will these criteria be based on the welfare of the child?

Margaret Hodge: Yes. The criteria will be based on the Hague Convention criteria which state that it is the best interests of the child with respect for his or her fundamental rights and to prevent the abduction, the sale of or traffic in children. That is the basic criterion and there are two countries in which we have recently had to take some action. In both Cambodia and Guatemala we have reflected those criteria.

Q357 Baroness Nicholson of Winterbourne: Chairman, I am concerned that the Minister is going to rely on the Hague Convention. Would the Minister like to recall that the Hague Convention is a contracting party convention. It is not part of the Declaration of Human Rights of the European Union. It does not feature in therefore and is inferior to the United Nations Convention on the Rights of the Child, which is an integral part of the fulfilment of the treaty as per the Council of Ministers' statement in June 1998. Would she not be wise to perhaps alter that phraseology and base it on the European Convention of Human Rights to which we are, as a nation and as a key member of the European Union, fully committed? Secondly, if it is based on the welfare of the child, could the Minister give thought to which experts she will be relying on to examine the cases of the children in the countries of origin? I appreciate that that is a rather large question but nonetheless we have exhaustive examinations here of the child’s welfare. If, as she has properly said, this will be based on the child’s welfare, perhaps she could think about which experts are going to be used to examine the case of the child in the country of origin.

Lord Filkin: On the first question I will make two points. First of all, whether or not a country has ratified the Hague Convention, the principles can still be applied, as can the UNCRC.

Q358 Baroness Nicholson of Winterbourne: Chairman, with respect, there are at least two points of difference from the United Nations Convention which have been tested in Strasbourg. I believe, and the United Nations Convention is the superior convention to ratify.

Lord Filkin: The second point is that I think this is essentially a DCA issue and I think I would ask my colleagues to write on this. There has been quite a detailed little tension between the Hague Convention and the utility of the Hague Convention, which is very widely respected, and the legislation has been developed in the EU around adoption enforcement, and I am happy to say I cannot remember the detail of that little tension but I would be very glad to get my colleague ministers to write giving our stance as a government on that.

Q359 Baroness Nicholson of Winterbourne: But, Chairman, the point is a point of fact rather than perhaps of opinion, which is that the Hague Convention is a contracting party convention and it is beneath and inferior to the UN Convention on the Rights of the Child.

Margaret Hodge: We are not experts but, as I understand it, the Hague Convention is based on the UNCRC. It is based on the United Nations Convention on the Rights of the Child.

Baroness Nicholson of Winterbourne: Chairman, there is at least one critical difference with regard to Article 21C of the UN Convention. I was merely making the point that perhaps the Minister would be wiser to rest her case on the United Nations Convention and the European Union Declaration of Human Rights on which our law is residing. That was all. It is a small point.

Chairman: My understanding is that the Hague Convention is drawn from the UN Convention but it does not mean to say that it includes everything in that, and that may be what we ought to clarify.

Q360 Baroness Nicholson of Winterbourne: There are several points.

Lord Filkin: Chairman, I do think a letter from the government on this would be the most helpful thing rather than us attempting for a second to match Baroness Nicholson’s expertise on this.

Q361 Baroness Nicholson of Winterbourne: I am not sure that I am an expert. Could we possibly hear about the experts that will advise the Minister, real experts, not politicians?

Margaret Hodge: I have just been through one experience of dealing with Cambodia and clearly I have taken advice there from all relevant experts. I do not know where Baroness Nicholson feels we should be seeking advice where we are currently not seeking advice. We will look to the voluntary sector, to the agencies that are operating in those countries. We will look to advice from the Foreign Office presence in those countries. We will look to advice from other countries which may have concerns about adoptions
from a particular country. We will look to all possible avenues of expert advice. We do not refuse to consider some particular experts’ advice. I do not know where she feels that we have not been wide enough in our net in seeking advice.

**Q362 Baroness Nicholson of Winterbourne:** Chairman, in this excellent piece of potential legislation it is very clear that children in this country are given every possible opportunity to have every facet of their problem addressed by real experts—teachers, doctors, nurses, the professionals. I merely wondered whether there was any possibility of getting real professionals in the countries of origin running to a standard that we set because these countries we are discussing generally are very high on lack of transparency and international corruption levels; they are generally very weak in judgments and courts and so on, and generally have very deficient public services in terms of health and education because they are generally very poor countries, and perhaps our experts from here, sent to those countries, could be the right people to give the professional advice.

**Margaret Hodge:** That is why the Hague Convention is a useful tool, because signing up to the Hague Convention ensures that appropriate rules are in place before children are considered for adoption. Whether it will be at the same standard with the same detailed discussions with the child and trying to have regard to their wishes and feelings before a decision is taken I do not know. That is why I think an international convention of the nature that we have with the Hague Convention is helpful. Can we send out people from the UK to all the countries from which there are international adoptions? I think probably the answer is no, if I am honest, because in many of the countries we are talking about two or three adoptions a year. Overall we are talking about 300 international adoptions a year. It is growing but it is still a relatively small number. Most of the children that are coming into the UK at the moment are coming from China and I do not think the Chinese authorities would be desperately pleased at the thought that we would impose on them the criteria and examinations that we currently undertake before we ensure that it is appropriate for a child to be placed for adoption here in the UK. I just do not think they would have it, bluntly. The best we do is ensure that the parents go through the UK procedures so they are agreed by a UK adoption agency as being appropriate as adoptive parents. Then we have to abide by the criteria and principles of the Hague Convention.

**Q363 Baroness Nicholson of Winterbourne:** Thank you. Chairman, while I welcome the Minister’s approach, which clearly puts the children first, she has quite specifically and accurately put her finger on the problem, which is that inevitably, because of the deficiencies in human rights in at least some of the countries of origin, she and her department naturally and understandably fall back on assessing the parents and not in fact on following the philosophy she herself has indicated is the right one of the child’s rights. I do not wish to take up any more time but perhaps the Minister or Lord Filkin might give me a moment or two some time on this when I can put the points to them in writing and face to face.

**Margaret Hodge:** Please do. I would simply reiterate one of the principles, which is that inter-country adoption should only be considered if the child cannot be cared for in a suitable manner in his or her country of origin. Hopefully that gives some comfort as well to Baroness Nicholson.

**Baroness Nicholson of Winterbourne:** Yes.

**Q364 Chairman:** Can I ask a final question? Section 7(3) is the one I was looking at, the special restrictions. What requirements would prospective adopters have to satisfy in order for them to be allowed to bring a child into the UK from a restricted country?

**Margaret Hodge:** We are considering the temporary suspension in Cambodia. We are looking at a number of exceptions there and it is difficult to be precise because you do not want to exclude exceptional circumstances which might arise, but the sort of situation we are thinking of is if the issue of adoption is by a relative in another country or if it is a sibling of a child that has already been adopted in this country. Those are the sorts of instances that we are considering, but I do not want to limit it in that response to you.

**Chairman:** Minister, you and Lord Filkin have been very generous with your time. Thank you very much indeed. It has been very helpful and we hope to be able to come to you with a report in due course.

---

**Answers to Questions raised by the Committee**

*Does the Department have any plans to introduce the systematic collection of child contact statistics currently only estimated from samples, such as the proportion of cases receiving legal aid funding? If so, when will these be in place?*

*On what basis does paragraph 25 of the RIA make the assumption that the draft Bill measures will reduce enforcement applications by up to 80 per cent?*
The Bill provides for special restrictions to apply to bringing children into the UK in the circumstances set out in clause 6(2). Where special restrictions apply, the regulations made under clause 7 will require the Secretary of State not to take any step she may otherwise have taken in relation to the bringing of a child into the UK.

However, if the Secretary of State is satisfied that the circumstances of an individual case are exceptional and that the case should be allowed to proceed. Clause 7(3) sets out that the regulations must also make provision for allowing such cases to proceed. We envisage that exceptional cases will be those where the concerns that lead to the imposition of special restrictions either do not apply or are overridden by the best interests of a child. This could include (but is not limited to):

— a person seeking to adopt a relative from the restricted country;
— a person seeking to adopt a child whose circumstances mean it is unlikely the child will have become available for adoption through practices contrary to public policy; or
— a person seeking to adopt a sibling of a child that has already been adopted by the prospective adopter in question.

Consideration will of course be given to what is in the best interests of the child and all the facts of the particular case. The regulations will make detailed provision for how such cases are to be considered.

March 2005
Written Evidence

Memorandum by Barnardo’s

1. BARNARDO’S

1.1 Barnardo’s is the UK’s largest children’s charity, working annually with almost 100,000 children, young people and their families across the UK.

1.2 We manage Family Centres where contact with non-resident parents is facilitated and are a significant provider of Family Group Conferences which deliver a child-centred approach to the resolution of conflicts between adults. Family Group Conferences best enable the involvement of extended-family members. Grandparents, in particular, often say that they are otherwise excluded from, and hurt by, many determinations of residence and contact.

1.3 We are particularly concerned about the effects of domestic violence on children and have, in partnership with the National Society for the Prevention of Cruelty to Children, the Department of Health and the University of Bristol published training materials on the subject for health visitors, police officers and other professionals. We have also published a resource pack for young women on understanding abusive relationships.

1.4 Barnardo’s provides support to survivors of domestic violence, including some services specifically for Asian women. One recent report, Bitter Legacy, referenced in Safety and Justice, found that domestic violence was a significant issue in over three quarters of our other services; projects with activities as wide-ranging as finding foster families and working with young offenders, settings as varied as day nurseries and “leaving-care” schemes.

2. WHETHER THE DRAFT BILL’S PROPOSED OUTCOMES COULD BE ACHIEVED THROUGH BETTER MEANS

2.1 The Bill is intended to assist in the implementation of the Green Paper Parental Separation: Children’s Needs and Parents’ Responsibilities. It is intended to be seen, within the context of this wider reform, as helping “the 10 per cent of parents who do turn to the courts for help.” Most issues of residence and contact are determined without recourse to court. Consequently, there is little information available about the extent to which children express their views about these decisions, have them listened to, or taken into account. Even with respect to the cases that do go to court, neither mediators nor solicitors routinely see children.

2.2 The Government’s position is that “the welfare of the child should be paramount . . . that a child should continue to have a meaningful relationship with both parents after parental separation, so long as it is safe and in the child’s best interests.”

2.3 It is Barnardo’s view that the Draft Bill, and related initiatives, concentrate efforts and resources too late in the process of parental separation to properly attend to children’s needs and views, and that the Bill, as it stands, is inadequately attentive to children’s safety.

2 Barnardo’s (2000) Things we don’t talk about: understanding abusive relationships. Barnardo’s, Barkingside.
6 HM Government (2005) Draft Children (Contact) and Adoption Bill, Ministerial Foreword. HMSO, Norwich.
3. **Children’s Safety**

3.1 The links between child abuse and domestic violence are well established. Studies have found a correspondence between men’s violence to their wives and abuse of children in up to 70 per cent of cases.9

3.2 Domestic violence does not stop when parents separate: over a third of all domestic violence occurs post-separation.10 Contact is a particular danger-point.11 At least 19 children have been killed in the UK during contact visits since 1999.12

3.3 We do not believe the Bill, or other non-legislative developments, properly address children’s safety, given that 30 per cent of applications to the courts have safety allegations associated with them.13

3.4 We are concerned that guidelines with respect to domestic violence issued by the Children Act sub-committee of the Lord Chancellor’s advisory board on family law, while approved by the Court of Appeal, have not been fully implemented across the country. We welcome the robust monitoring now proposed but consider that the reliance on a “finding of fact” that domestic violence has occurred does not recognise the complexities of abusive relationships which our practice makes us aware of, or children’s fears of losing the protective parent. As Sandy, a young woman receiving services from Barnardo’s, has said:

> “Dad had always been violent with Mum, but it got worse and worse. I was scared for my brothers and sisters, scared that they’d get hurt. But what really frightened me was that we’d all get taken into care.”

3.5 Barnardo’s continues to hold to the view advanced in earlier consultations on domestic violence and children’s legislation, that the introduction of a mandatory risk-assessment checklist and a rebuttable presumption against unsupervised contact when domestic violence has been cited, as featured in New Zealand law, are essential to the safety of children. We do not agree with the view expressed by the Minister for Children, Young People and the Family during consultation on the then Children and Domestic Violence Bills, that such a presumption would contradict the paramountcy principle. It would, however, better safeguard children.

4. **A More Child-Centred Bill?**

4.1 At present up to 25 per cent of children whose parents separate receive no explanation from their parents about what is happening.14

4.2 Children are just as likely to experience life in a step-family post separation as to stay with a lone parent.15 Children’s understandings of marriage, parenting, divorce, and remarriage differ by age. Young children see marriage and divorce in concrete terms, eg step-parents as good or bad. Older children emphasise activities and skills, parental and marital roles. Young people focus on psychological factors, such as compatibility, and are more thoughtful about the advantages and disadvantages of step-families and living arrangements after divorce.16

4.3 For some families, separation may bring an end to a long period of conflict, and can provide an escape for children, who have witnessed or been involved in adults’ disputes and violence. For others, separation may be the beginning of hostilities between their parents over property, child support, residence and contact with them: issues that put the focus on the children themselves. They may become the weapons and trophies in a war neither of their making nor understanding.

4.4 The quality of the relationship between parents and their children, post the adults separating, is the most significant of all related factors affecting children’s well-being.17 The quality of the relationship reflects the impact of other important stress factors, such as conflict and economic hardship, and in turn predicts a wide range of negative outcomes in childhood, adolescence and extending into adulthood.

---

4.5 Courts should not make things worse for children. Family Law is in need of a more radical overhaul than the Draft Bill proposes. Court processes need to be configured in ways that better deliver to the outcomes sought in *Every Child Matters*18, that better safeguard children, that do not exacerbate conflicts between adults and contribute less to economic hardship. Situations that come to court are complex. There may be deep-seated animosity between adults aggravated to the point of unreasoned intransigence. There are often—and this is a more common feature of our practice experience—well founded fears, held by resident parents, for the safety of their children: fears compounded by anxieties that no-one will listen to, understand or help them. As Peter, a young child known to one of our outreach schemes, said:

“I try to keep myself and my brother safe by staying in my bedroom and telling Grandma that Mum is hurt again. It’s safer for me to do this than trying to go outside and get help.”

4.6 The quality of relationships between parents following lengthy court conflict, and the protective instincts of resident parents when there is a real threat of violence, are, in our experience, unlikely to be greatly affected by punishment or compulsory parenting orders such as those associated with this Draft Bill. We provide parenting programmes ordered by the civil and criminal courts. Parents attending these have indicated how hard they have tried, unsuccessfully, to elicit this help much earlier. We believe that the real policy challenge is to enable parents to address the conflicts between them much earlier, in both their and their children’s interests. The Draft Bill marshals resources to address failure, while insufficient is being done to enable success. As the Right Honourable Lord Justice Wall notes:

“The message is that if, in the forensic process, we get to enforcement we have failed. The order we have made is not working. The first proposition, therefore, is that we should try never to get to the stage of enforcement. We should use every means available in our attempt to ensure that contact works.19”

5. Conclusion

5.1 The actions proposed in this Draft Bill, and related initiatives, will occur too late in the process to achieve the sought-for outcomes for children: by the time adults are in court, positions have become entrenched and agreements reached are more likely to have been concluded through pragmatic compromise than any real consideration of children’s best interests.

5.2 It is Barnardo’s view that Early Day Motion 476,20 placed in the Commons on 11 January 2005, establishes the principles that should underpin this Draft Bill, where it “recognises that child abuse, and domestic violence, which is intimately linked to child abuse, often goes unrecognised because of the powerlessness of victims; insists that the voices of children should be heard; calls upon the Government to ensure that a reformed family justice system is centred upon the best interests of children”

5.3 What is needed is a Bill that looks more to children’s safety that ensures risk is assessed and introduces a presumption against unsupervised contact where there is risk of violence.

5.4 What is needed is a more systematic set of services that parents and children can be made aware of through the information sources which the Green Paper21 proposed. Services would need to recognise that separation is a process, not an event. They should be available in Children’s Centres, rather than court offices, to intact families, those breaking up and those re-forming at key points of their transition. Resources expended on such a continuum of support would likely prove more effective than spending money on programmes and community-based orders which the Draft Bill proposes for those few who persist in not complying with court orders.

March 2005


Memorandum by Tessa Boo

Thank you. I will do the best I can in the time available. I am a child abuse witness. Since the day I reported the abuse, I have been inundated with the experiences of people who encounter “problems” in the reporting of child abuse and in the ability to protect the children from further abuse. The seeking of child contact in the existing system is impossible for most people. Please share the experience. I hope that this golden opportunity to improve the situation for children will not be missed and that the radical changes to make Every Child Matter, in reality, will be made.

In many cases children who are suffering abuse, in domestic situations, are brought to the notice of the authorities by individuals who are close carers for the children. In other words by people who have an established bond with the children. The established bond of close carers, who are also child abuse witnesses, is destroyed and then deleted at the very start of the child protection process. There is no proactive system in place that makes it possible for children to maintain their bond with close carers. Hostile abusive parents, who lie and are often in denial of the abuse that they are inflicting on the children, can and do hurt the children further, both physically and emotionally, if they know that any legal proceedings regarding child contact are to take place. The length of time any legal proceedings take leave the children “at risk”. The outcome for the children, in many cases is, that when all intervention services fail to improve the situation within their direct family, the children have also been isolated from the other people who love and know them well. Many of the children end up in the “care” system, being pushed from pillar to post. In the best interest of the children the established bonds the children have with close carers must be recognised at the time when child abuse is reported. It is possible to make change and put in a process at the very start, at the time when the abuse is reported. In the best interest of the children, the “system” must recognise the value of established carers and proactively seek to make sure that the children remain in contact.

Child Abuse Witnesses

Child Contact Matters

We are the witnesses, the people on the front-line, who are shocked into awareness of child abuse and then forced by our fear for the children to contact the child protection authorities. we are the aunties, the long-term carers, the extended family members, with and without blood ties. We love and know the children well. We have all experienced the reporting of child abuse and the child protection process. A process in which we are isolated, marginalised, disbelieved and insulted, often to see the children further abused. We have no rights. We can only watch as the abuse continues and our bond of love and trust with the children is destroyed and deleted. We could go to the courts to seek access but we are aware of the financial cost of this, the length of time it can take, how dismissive the courts are of us and how worthless an access order can be. Most of us would not use the courts in any case because we know that any legal proceedings can escalate conflict and cause the children to be further damaged. Our child “care” system will remain full of very unhappy, isolated damaged children if we don’t go back to the start and make real changes now. Every child has a “right of access” to the love and care of the people who care for them.

A COMPULSORY Early Intervention Mediation Programme, must be afforded in all bona fide child contact concerns.

March 2005

Memorandum by British Association for Adoption and Fostering

1. Introduction

British Association for Adoption and Fostering (BAAF) is a registered charity, which works to promote and develop high standards in adoption and fostering for childcare, medical, legal and other professionals; to promote public and professional understanding of adoption and fostering and of the life-long implications for children separated from their birth families, including their racial, cultural, religious and linguistic needs. It acts as an independent voice in the field of childcare and as an umbrella body providing overall co-ordination and a concerted voice for all its member agencies and all those working with children.

BAAF’s corporate members include local authorities in Great Britain, all the voluntary adoption agencies and many independent fostering agencies. In addition, it has many individual members from a variety of professional backgrounds, particularly social work, medicine and the law. BAAF’s special interest groups, focussed on social work, research, black issues, health and law, contribute through regular meetings of their advisory committees to the development of BAAF’s policy and practice guidance. BAAF also has established
BAAF welcomes the publication of this draft bill and the opportunity to debate its contents in advance of the publication of a formal bill. In view of BAAF’s primary areas of concern, these comments focus particularly on Part 2 of the draft Bill, Adoptions with a Foreign Element.

2. Contact

We note that it is expressly provided that the proposed new powers of the court in relation to contact will not apply when contact orders are made in respect of children who are looked after by local authorities or when a contact order is made at the same time as an adoption order. We believe that this is the right approach, since where local authorities are involved other mechanisms will be available, and be more appropriate, in respect of enforcement of, or mediation in, contact. With regard to contact orders made at the time of adoption orders, which are relatively rare in any case, it is almost unheard of for courts to impose a contact order against the express wishes of prospective adopters, and it is hard to envisage circumstances where the new court powers proposed in Part 1 of the Bill would be appropriate in adoption cases.

Where it is an agency that has arranged the adoption placement, it is that agency’s responsibility to consider the child’s needs for future contact and to try and ensure that these are met within the placement. The agency will be in a position where it could, if necessary, provide the sort of assistance that is envisaged in the Bill for private law cases. In non-agency cases, it might at first glance seem helpful to have these powers available, particularly in step-parent adoptions, which are at one end of the spectrum of private law disputes. But, in reality, it is hard to envisage circumstances where the need would arise. If the court considering the adoption application believes that contact is important for the child, but that the adopters are unwilling to comply with contact arrangements, the likelihood is that the court would refuse to grant the adoption order, particularly in the light of its duties under the “welfare checklist” in section 1 of the Adoption and Children Act 2002.

3. Adoptions with a Foreign Element

We welcome the provisions proposed here. It is, sadly, the case that circumstances can arise where a country’s adoption procedures fail to protect children’s welfare and safeguard the rights of all those involved in the adoption. We accept and support the need for a clear and transparent procedure to be in place to enable adoptions from such countries into the UK to be suspended. Without such a procedure, the UK could be seen to be colluding with the abuses. We particularly welcome the proposed power in clause 7(3) to allow the Secretary of State to make exceptions in an individual case. This is an important safeguard, which should minimise the risk that an individual child’s welfare might be adversely affected by a policy designed to safeguard the welfare of children as a whole. It is right that there should be the possibility of examining the particular circumstances of a case. We shall of course await keenly the regulations to be made under these provisions, and would wish to take an active part in responding to consultation on them.

4. Wider Implications

This draft Bill addresses one area of concern in inter-country adoptions. For the most part, adequate safeguards have now otherwise been put in place by the Adoption (Inter-Country Aspects) Act 1999 and the Adoption and Children Act 2002 and regulations made under these. We do, however, have a concern about one aspect of this legislation, and would suggest that this Bill be used as an opportunity to correct the deficiency.

Briefly, the problem is this. The legislation governs the process not only of children being brought into this country for adoption, but also of those going out of the country for adoption abroad. The number of cases where a child from Great Britain needs adoption abroad is small, and, by and large, when such a course is pursued, it is likely to be for placement with a relative or other person already known to the child. Existing law (section 55 Adoption Act 1976) allows the court to make an order “authorising a proposed foreign adoption”. This enables prospective adopters who have been living in this country but who are not domiciled here, to take the child with them to their country of domicile to adopt there.

In addition, where a child is in the care of a local authority, the Children Act 1989 provides that a court may authorise the placement of a child outside England and Wales, under certain conditions. This latter provision has been used in a small number of cases where the desired overseas placement has been for the purpose of adoption. The use of the Children Act provision will, however, in future (after implementation of the 2002 Act) be impossible where the local authority’s plan is for the child to be adopted. The only option will be to
use the provisions of section 84 of the Adoption and Children Act 2002 which replace and extend section 55
of the 1976 Act. The practical difficulty here is this—under section 84, an application for an order may only
be made when the child has already been living with the prospective adopters for at least 10 weeks, and it is
an offence under section 85 of the Act to remove a child from the UK for the purpose of adoption without an
order under section 84. If the prospective adopters actually live abroad, this means that for the placement to
be achievable, they will have to disrupt their normal lives (including their employment) to come and live in
this country with the child for a period of at least several months.

While it is of course desirable in principle for the court to have the benefit of such a “trial period” before
making an order, the provisions do not make allowances for individual cases where it may be appropriate, and
safe, for the child to be allowed to leave the country for the purpose of having the trial period in the adopters’
own home abroad. Such a course is indeed envisaged within the Hague Convention provisions where a child
can be “entrusted” to prospective adopters, provided the necessary conditions are satisfied, with the intention
that the order should be finalised after the trial period has been completed. Circumstances will of course vary
from case to case, but we would argue that just as the Secretary of State needs to be able to make exceptions
in particular cases under clause 7(3) of the draft bill, so the High Court (and it is only the High Court that may
hear section 84 applications) needs to have the power to authorise a child to leave the country for placement
for adoption abroad, if it is satisfied that this will safeguard and promote the child’s welfare. Although the
Adoption and Children Act allows for some of the provisions in relation to inter-country adoption to be
modified by regulation, it would appear that the requirement for the child to have lived with the applicants
for ten weeks before an application is issued cannot be avoided since this is included on the face of the Act.
We would urge that consideration be given to an amendment to modify this provision and extend the powers
of the High Court in appropriate cases.

5. Consistent Standards

While this is not a matter for legislation, we would like to take this opportunity of raising our concern that,
although National Adoption Standards for agency adoptions in England were published in 2001 after
widespread consultation, no standards have been introduced for work in respect of intercountry adoptions.
We are told by service users that there is considerable discrepancy between different local authorities in the
speed with which applications for assessment for intercountry adoption are processed. While it is
understandable that pressure on the time and resources of each agency will vary, the establishment of national
standards could at least set a target which all agencies could then aim to achieve.

28 February 2005

Memorandum by Campbell Chambers Solicitors

These submissions are made by Ms Angela Campbell, Campbell Chambers Solicitors (25 Hatton Garden
London EC1N 8BQ). The firm has two partners and is based in Central London. We conduct a mixture of
Crime, Immigration and Family work. The latter comprises of public and private law (children), and adoption
work. I am a member of the Law Society Children Panel.

1. The proposed contact provisions appear to be appropriate and proportionate. In relation to enforcement
ultimately this is not proportionate as the enforcement provisions may disrupt the stability of the time the child
has to spend with the compliant parent as that parent would still have to make the child available for contact.
Also I can foresee that additional resources will have to be made available for the facilitation and management
of contact and these in reality should not be borne by the parent that is compliant.

2. The proposed contact arrangements will be far more effective if implemented at the very early stages of
proceedings or ultimately prior to proceedings. Thus, when relationships break down there should be
information offered to the parents as regard the best way to arrange contact and they should know of the
consequences of non-compliance with the agreed arrangements. Enforcement is more difficult in reality to be
workable for the reasons stated above. Also very often it is difficult to get the non-compliant parent to attend
court to deal with the arrangements for contact.

3. The proposed contact provisions are sufficient but the enforcement proposals should include at the very
early stages in proceedings the Court giving greater consideration to the possibility of changing the residence
of the child if long term the child would be able to have reasonable contact with both parents if on balance
both parents are able to care for the child. Very often the non-compliant parent would not have the means to
reimburse for financial loss to the compliant parent and thus I foresee situations where compensation may
arise as a method of enforcement to be rare.
4. The proposed adoption provisions are necessary, workable and proportionate in my view but the restricted list of countries and the reasons must be kept constantly and rigorously under review.

5. It may be that measures should be taken to develop a system whereby information meetings and parenting programmes/classes are made available in the community to all parents with children in the event of relationship breakdown.

6. The cost of monitoring, managing and facilitating the measures outlined as regard a contact activity direction may be more costly than under the present system but this has to be balanced against a greater prospect of contact disputes being resolved.

3 March 2005

Memorandum by Dr Liz Trinder, Jo Connolly, Joanne Kellett and Dr Caitlin Notley, Centre for Research on the Child and Family, University of East Anglia

1. THE BILL IS VERY DIFFICULT TO UNDERSTAND AT PRESENT

Without the Explanatory Notes we would have found it very difficult to understand the parts of the bill relating to contact. We suspect that most parents would also find it hard to understand and that legal advisors would also find it difficult to explain the bill to their clients. This is unfortunate given that the bill is founded on the presumption that a clear understanding of the law will have a positive influence on parental behaviour. We strongly urge that the bill is redrafted in a shorter and clearer fashion. In particular, we found it unhelpful that “contact activities” was not defined until Clause 11E.

2. THE PHRASE “CONTACT ACTIVITIES” IS MISLEADING

“Contact” is generally understood as an interaction between an adult and a child. In this case the “contact activities” are not contact per se, but interventions with an adult designed to support and facilitate contact. A more appropriate phrase might be “contact support activity” or “contact facilitation activity”. Alternatively, these interventions could be described as “parenting support activities” or “parenting support programmes”.

3. THE PARAMOUNTCY TEST SHOULD BE RETAINED FOR ENFORCEMENT CASES

We welcome the retention of the paramountcy test in Clause 11A(8). We suggest that it would be helpful if a similar statement be included in Clause 11B.

We are deeply concerned that 11G(9) merely directs the court to take account of a child’s welfare in enforcement cases, rather than this being the paramount consideration. It seems inappropriate to us that the lowest welfare test is to be applied in the most difficult cases where the court’s intervention is at its most drastic and the potential gains for the child may be at their most marginal. In these cases the court has to balance the possible gains to the child from enforcing an order, with possible losses in terms of increased parental hostility and a negative impact on parental functioning. The use of the lower welfare test in the most difficult cases risks giving the impression that the court is more concerned with imposing its will rather than securing the best outcomes for the child.

4. ENFORCEMENT OF EXISTING ORDERS SHOULD BE PRECEDED BY AN INVESTIGATION OF THE CONTINUED APPROPRIATENESS OF THAT ORDER

Clause 3 is based on the assumption that an existing order was, and remains, an appropriate order to enforce. Australian research on the operation of enforcement applications clearly indicates that reconsideration of the original order should take place before enforcement occurs. In the Australian study22 new contact orders, rather than enforcement of existing orders, were made in 75 out of 100 cases. The new orders often reflected concerns about harm which may have been inadequately addressed in the original order. Alternatively, a new order was required to reflect changed circumstances. The Australian evidence therefore suggests that clause 3 should include a statement to the effect that the court in considering whether to enforce an order should do so only after it is satisfied that the existing order remains appropriate for the child.

5. THE POWER TO IMPOSE A CURFEW IS INAPPROPRIATE IN FAMILY LAW CASES

We cannot see what useful purpose a curfew would serve in terms of facilitating contact.

6. COMPENSATION FOR FINANCIAL LOSS SHOULD APPLY EQUALLY TO RESIDENT AND CONTACT PARENTS. THE NEW PROVISION IS A RETROGRADE STEP IN LINKING CONTACT AND MONEY. THE PROVISION IS ALSO LIKELY TO INCREASE RATHER THAN REDUCE LITIGATION

A financial loss because contact does not take place may accrue to either a contact parent or a resident parent. In our research we have examples where a resident parent has not made the child available after a long journey by the contact parent. Equally we have examples where a contact parent has not turned up when the resident parent has made a long journey to a pre-arranged mid-point for handover. The bill, however, only offers compensation to the contact parent. This appears to be iniquitous. It is also worth pointing out that the resident parent’s financial hardship is more likely to have a direct negative impact on the child.

We are concerned that clause 4 re-establishes a connection between contact and money, despite strong messages from the courts to parents that the two issues are to be treated separately.

We also note that one of the aims of the bill is to reduce litigation. Clause 4 appears to open up a significant new avenue for litigation, potentially for relatively trivial amounts of money.

7. THE RESOURCE IMPLICATIONS OF THE PLANNED CHANGES APPEAR TO BE UNJUSTIFIABLY OPTIMISTIC

It is difficult to envisage that the measures announced in the Green Paper will lead to a substantial reduction in court applications. Indeed key measures in the Green Paper, eg in court conciliation and post-order follow-up, relate to parents who have already reached court. In order to reduce the number of repeat applications, effective and adequately resourced interventions will be necessary. The refocusing of the CAFCASS role may well increase costs, as well as return cases back into the system which might otherwise have continued outside the system, albeit in an unsatisfactory manner.

Although we welcome the powers to refer parents to group parenting classes we are not convinced that four one hour sessions on the current costings will be adequate, particularly in enforcement cases (EN 29-30). The evidence from the United States and Australia is that these high conflict cases require relatively expensive intensive programmes delivered by specially-trained mental health professionals.

March 2005

Memorandum by Professor Judith Masson and Dr Cathy Humphreys, SWELL (Centre for the Study of Safety and Well-being) University of Warwick.

1. A bill such as this requires the clearest drafting, so that it can readily be understood by those without legal education, and by the parents at whom it is directed. As currently drafted the bill is difficult to understand and longwinded.

Given that contact issues impact on a large number of people, many non lawyers may be asked to advise on them, and the powers may be exercised by lay magistrates as well as the judiciary, there would be many advantages in setting out the provisions more clearly and succinctly. S.11B(2)(d) is particularly incomprehensible and probably unnecessary given the current definition of a contact order in the Act.

“A contact order with respect to a child in favour of a person” (s.11B(2)(a)) is a “contact order” within the definition in the Children Act 1989, s.8, as are orders varying initial orders, interim orders and orders for no contact. S. 11B (1)-(4) could therefore be redrafted:

“Where the court makes a contact order it may impose a contact activity direction on a party to the proceedings.”

Subs 6 is unnecessary.

2. THERE IS A NEED TO CLARIFY THE EXTENT TO WHICH THE WELFARE OF THE INDIVIDUAL CHILD HAS TO BE CONSIDERED WHEN DIRECTING ATTENDANCE AT A CLASS, IMPOSING CONDITIONS OR OPERATING ENFORCEMENT POWERS

The current law on this point is unclear. It was discussed in Making Contact Work but no final agreed view was expressed. In relation to imprisonment, two distinct views have been expressed by the Court of Appeal in Churcheard v. Churcheard[1984] 1 FLR 635 and A v N[1997] 1 FLR 533. The CASC Report seemed to support the later case on the basis that the decision to imprison a carer was not a decision concerning the upbringing
of the child and therefore Children Act 1989, s.1(1)—the paramountcy of welfare principle—could not apply. However, it remains the case that Churchill has not been overruled.

Clause 11A(8) applies the paramountcy test to contact activity directions but no comparable provision is included in s.11B. It is arguable that this is unnecessary because a condition is included in an order to which s.1(1) applies, however a clear statement would avoid this needing to be clarified in the courts.

Clause 11G(9) [EN para 19] applies a different lower welfare test when making enforcement orders under the new provisions. This leaves unclear the extent to which welfare should be taken into account in relation to the existing enforcement mechanisms—fines and imprisonment—which are apparently to be retained. Clearly the emphasis given to child welfare is a matter for Parliament. For the sake of clarity and consistency, the welfare standard in any enforcement of contact orders should be stated on the face of the bill.

3. The Powers to Make Contact Parents Fulfil their Obligations to the Child Remain Very Limited

Under the current law contact orders are directed to the person caring for the child, their failure to make the child available for the stipulated contact is a breach of the order; the contact parent’s failure to turn up is not. The bill appears to suggest (s.11G(7)) that either parent can apply for enforcement [see also EN 18] but unless the definition of a contact order in Children Act 1989, s 8 is changed contact orders will remain enforceable only against a person with care. The bill, s 11G(3) may enable the court to impose an enforcement order if a contact activity condition in the contact order is breached [EN 19] but will not enable a contact parent to be compelled to see their child. There are no powers, which can be used to make a contact parent exercise the contact that he or she has been allowed under an order. It should also be noted that in recent research (Blackwell and Dawe 2003) more mothers with residence wanted their children to have more contact with the father than wanted them to have less contact. It appears to be accepted that to require an unwilling parent to exercise contact would be more damaging to the child’s welfare.

4. The Provisions Relating to Recovery for Financial Loss do not Operate Equally as Between Parents With Care and Contact Parents

Contact orders only require the carer to allow another person to have contact. They do not require the contact parent to attend for contact. Failure to turn up can involve the parent with care in expense, for example lost earnings because he or she cannot go to work, or the loss of use of tickets where the contact parent had agreed a contact arrangement. S11I may be intended to ensure that financial loss can be recovered from the other parent whether it was caused by the parent with care or the contact parent, however it is inadequate to do so because it relies on the concept of compliance with the order. EN para 28 does not reflect the clause as drafted.

It would also be inappropriate to make the parent with care pay financial compensation to the contact parent when the contact parent is in arrears with child support payments. Subs (7) may allow the court to consider this but would not prevent A being ordered to pay B when B in fact owes A far more in child support.

5. Safety in Contact

It is clear that the safety of the mother and child are major issues in many of the contact cases which the courts handle. In L. Trinder et al., A profile of applicants and respondents in contact cases in Essex (2005), over half the women cited physical or emotional abuse as a reason for the breakdown of the relationship. There had been domestic violence injunctions in 25 per cent of the cases and there were current injunctions in 14 per cent. DCA Guidelines on contact where there is domestic violence are not being applied rigorously and consistently throughout the court system. As a consequence, courts are continuing to order contact that is not safe. This needs to be dealt with as a priority before changes in enforcement. Furthermore, a protocol on risk assessment by CAFCASS officers in cases of domestic violence or child abuse needs to be agreed and implemented.

The bill makes provision for taking account of “reasonable excuses” when considering whether to impose an enforcement order but the court is not specifically required to consider issues of safety for the parent with care and members of her family other than the child. It is therefore unclear how the court would deal with an application to enforce where a residential parent refused to hand over a child for contact to a parent who was drunk, under the influence of drugs, highly agitated or angry, or where the child was refusing to attend.
6. Impact and Costings

Evidence does not currently exist that the measures in the Bill will increase compliance with contact orders. The most recent research by Trinder et al. (2005) indicates that at the beginning of proceedings, the small minority of the population of separating parents who use the courts are different in many respects from those who are able to resolve their disagreements outside the courts. There is currently no basis to suggest that changing the law in the way proposed in the draft bill will lead to the substantial reduction in cases suggested in EN para 58.

7. CAFCASS Officers Will Have Substantial New Responsibilities but the Resourcing Implications of This Appear to be Denied

The EN para 54 states “we do not anticipate that the provisions will have a significant effect on public service manpower” however substantial new obligations are imposed by the bill on CAFCASS see ss 11C(3)-(6), 11D(2),11F(4) and 11H(6). These four new duties will mean providing more reports even if they are short proforma reports, the information will still have to be collected and collated. In addition, in order to be clear that contact is safe far more time needs to be spent than is generally the case with children to elicit their views and feelings about contact. Furthermore, risk assessments will be complex and time-consuming in cases where issues of violence are raised. Greater use of FPR 1991, r 9.5 to provide for representation of children and the new powers which will provide for tandem representation of children in s 8 proceedings will also be necessary. Even if the number of cases does decline through the powers in the bill, there is likely to be a considerable strain on CAFCASS for some time.

8. The Provisions Should be Applied to Children Generally. Children Accommodated by the Local Authority Under Children Act 1989, s 20 Should not be Excluded

None of the new provisions applies were a child is looked after by a local authority, or is the subject of an application for an adoption order. Children are looked after when they are either accommodated by a local authority under Children Act 1989, s 20, or subject to a care order. Where a child is only accommodated, a parent (or other person such as a grandparent or a sibling with leave) can apply for a contact order against the foster carers or the local authority. The Children Act ss 9(1) and (2) specifically allows such applications, precluding s.8 contact applications only where the child is in care, or by the local authority. Such applications are rare but provide a last resort where the local authority is unwilling or unable to facilitate contact between their carers and the applicant. Where the court has considered that a contact order should be made it should have the same powers of direction and enforcement whoever is looking after the child. To provide otherwise is discriminatory and potentially breaches ECHR art 8 taken with art 14 because the court would have additional enforcement powers if the child were not looked after. Given the European Court of Human Rights’ approach of applying strict scrutiny to limitations on contact for children in public care EN 62 does not reflect the likely approach of the ECtHR. It would be appropriate to remove the restrictions in ss 11A(3), 11B(3), 11F(3), 11G(2) and 11I(2).

February 2005

Memorandum by Children’s Rights Alliance for England

INTRODUCTION

The Children’s Rights Alliance for England (CRAE) is a children’s human rights organisation. With our 265 member organisations, we promote the fullest implementation of the UN Convention on the Rights of the Child, which the UK ratified in 1991.23

CHILDREN AT THE FOREFRONT

“. . . what does not seem . . . satisfactory is that, whilst the Children Act 1989 and the Family Law Act 1996 appear to give greater priority to the wishes and feelings of the child, not just in courts but throughout related legal, administrative, and mediatory processes, our research would suggest that the vast majority of children currently involved in parental divorce do not have their wishes ascertained by any professional and do not know that anybody has the slightest interest in them.”24

23 All our members have signed up to the fullest implementation of the Convention on the Rights of the Child. However, this submission does not necessarily reflect the views of all our members.

The Children’s Rights Alliance for England believes children must be at the heart of all discussions and decisions about contact and residence. We think the only way to make sure this happens is to give primacy in law to children’s wishes and feelings. This would require a new clause in the draft Children (Contact) and Adoption Bill.

“I don’t think there is enough consultation with young people. We kind of get left out.”

“Maybe there should be some sort of official recording of the child’s views. If their views had to be documented for a divorce to go through or something like that then it leads to some sort of obligation that they [decision-makers] do have to listen.”

We need to change the current situation whereby children’s wishes and feelings are sometimes considered but not necessarily followed, to a situation where it is the norm for children’s wishes and feelings to be at the forefront of decision making, the determining factor even. We are having detailed discussions about the way forward within the Children’s Rights Alliance for England. These discussions include children and young people. In early April, we are holding a small seminar, including affected children and young people, to consider how the law could be changed to give greater prominence to children’s wishes and feelings. We very much hope the Committee can consider the report from this seminar.

We believe to put children truly at the heart of decisions relating to contact and residence, the child’s wishes and feelings should be the paramount consideration. This would require an amendment to sections 8 or 9 of the Children Act 1989. At this stage, we believe there are at least four options.

**Option 1:** a positive duty to follow the child’s wishes and feelings:

“A court shall only make a section 8 order where it is consistent with the child’s ascertainable wishes and feelings.”

**Option 2:** a negative duty to follow the child’s wishes and feelings:

“No court shall make any section 8 order that is expressly against the child’s ascertainable wishes and feelings.”

**Option 3:** following the child’s wishes and feelings to be the norm; provision for courts to override the child’s wishes and feelings:

“A court shall only make a section 8 order that is not consistent with the child’s ascertainable wishes and feelings in exceptional circumstances and when to fail to do so would manifestly not be in the child’s best interests.”

“Where a court makes a section 8 order that is not consistent with the child’s ascertainable wishes and feelings, it must:

(a) Notify the child in writing of the reasons for the decision.

(b) Set a date for a review of the decision, no later than three months after the initial decision.

(c) Make arrangements for the child to be represented at the review hearing.”

**Option 4:** the child’s wishes and feelings to be the primary consideration.

“When determining an order under section 8 the court shall give primary consideration to the ascertainable wishes and feelings of the child (considered in the light of his age and understanding).”

“Where a court makes a section 8 order that is not consistent with the child’s ascertainable wishes and feelings, it must:

(a) Notify the child in writing of the reasons for the decision.

(b) Set a date for a review of the decision, no later than three months after the initial decision.

(c) Make arrangements for the child to be represented at the review hearing.”

Young Voice carried out in-depth interviews with 52 children about parental divorce and separation. Children as young as 12 expressed strongly their wish for their views to be taken seriously:

Sally (12): If the court decides [residence] you don’t get a word in edgeways. I wish I could have chosen.

Trinder and others (2002) show that children as young as seven want to be involved:

“No one has ever asked me to decide what I want.”

“If they did, how would you decide?”

---

25 CRAE discussed the Government’s consultation document parental separation: children’s needs and parents’ responsibilities with our Young People’s Panel (all under 18), at a meeting in August 2004 and through a teleconference in October 2004. This is a direct quote from one of the young people. Unless otherwise stated, all the direct quotes in this submission are from young people working directly with CRAE.
“Spend a lot of time thinking on it.”

In no other circumstance would it be seen as acceptable for a court to force a person into maintaining a relationship. In no other circumstance would it be seen as acceptable for a court to force a person against their will to sever a relationship. But this is precisely what happens to children. We believe forcing a child to have or not to have a relationship with a parent violates their integrity and human dignity.

**Not adding to children’s powerlessness**

“It’s difficult to sit in front of them [parents] to say “I don’t want to be round you anymore” so maybe there could be a separate thing for the child to talk to someone they trust like a teacher or at least they should feel able to go into the meeting and they shouldn’t be made to feel uncomfortable and perhaps they should meet the young people there before hand so they feel like they have some sort of basis for what is going to be happening.”

Children are uniquely vulnerable to coercion and intimidation. Parents have an incredibly powerful “hold” on them and it is often difficult for children in abusive or neglectful situations to consider a different life. We believe children’s powerlessness and vulnerability is all the more reason for ensuring their wishes and feelings are properly ascertained, and fully respected. It is too easy to dismiss abused children as fragile victims who need protecting from themselves. It is too easy to see, in practice, children’s best interests as separate from their wishes and feelings. But children’s wishes and feelings are at the core of their being.

Not being involved in decision-making about contact arrangements can make children feel even more bewildered, blameworthy and powerless. Not being taken seriously harms children, in the here and now and in the longer-term.

We believe putting children’s wishes and feelings at the centre would give respect to children who categorically do not want to maintain a relationship, while also creating space for the child who wants to see their parent but also wants to be and feel safe. In the first situation, a child should not be forced into seeing a parent; in the second situation a child should be given appropriate support to maintain a safe relationship.

“For me . . . the overall message that comes through [from the CRAE summary of the Government’s most recent consultation document] was that the Government are sort of concentrating so much on how to help parents sort out the issues involved so they are kind of neglecting the idea of talking to children and I think it is of utmost importance that children are consulted all the way through.”

The emphasis must be always on the child, with processes designed around their evolving capacity and changing needs.

“I don’t think it’s fair when a decision has been made to stop you seeing your dad when you’re a baby. Then when you’re older, you don’t get the chance to change the decision, and you never know your dad.”

The young people we discussed this subject with were especially concerned about decisions being made concerning a baby or young child, and the child not being informed or supported later in life to question or change the decision. Without an in-built reviewing procedure, children can go through their whole childhood without their views on an earlier decision ever being formally considered.

Women’s Aid has documented the views of children who are forced against their will to maintain a relationship with a parent. This is plainly as wrong as ignoring a child who does want to maintain their relationship with a parent. It is potentially a lot more dangerous too, to force a child to see a parent, given that the child’s refusal or resistance is usually borne out of fear. The 28 children that have died as a result of contact arrangements are testimony to the fact that children are not being adequately listened to and protected to have safe (or no) contact.

Children with experience of parental separation do not engage in high-profile stunts, they do not write newspaper articles or meet with Ministers and Parliamentarians. They are invisible in public policy making. They are invisible in family proceedings too, and research shows parents rarely include them in informal arrangements. We have to find a way of bringing children positively to the fore. We very much hope the Committee will consider how to strengthen the child’s voice; in particular we hope the Committee will take evidence from affected children and young people themselves.

*March 2005*
Memorandum by the Claimants in the judicial review case R (Charlton Thomson and others) v Minister of State for Children

INTRODUCTION

1. The purpose of this brief submission is to explain why Part 2 of the Bill as drafted is both fundamentally flawed as a means of achieving its stated purpose—safeguarding the welfare of children involved in the intercountry adoption process—and wholly unfair to prospective adopters who have committed themselves in good faith to adopting from countries that may be the subject of the “special restrictions” regime contemplated.

2. The group is in a unique position to comment: each of its members have been directly affected by the “action” taken by the Minister of State for Children in relation to intercountry adoptions from Cambodia. That action (which has been taken without statutory authority) very closely resembles the arrangements which are contemplated by the Bill. It is presently the subject of a judicial review case, R (Charlton Thomson and others) v Minister of State for Children (CO/4555/04) which is listed to be heard by the Administrative Court on 18 and 19 April 2005.

3. The six couples who are Claimants in that litigation have asked for these submissions to be made to the Joint Committee on their behalf. It is appreciated that the Joint Committee only has two more meetings, but if evidence direct from members of the group on whose behalf this submission is made would be useful, this could certainly be arranged at very short notice.

BACKGROUND: THE TEMPORARY SUSPENSION AND ITS RELATIONSHIP TO THE BILL

4. On 22 June 2004 Margaret Hodge, the Minister of State for Children, announced an immediate, “temporary” (though indefinite) “suspension” of intercountry adoptions from Cambodia. There was no consultation preceding this step with anyone, and in particular none with a number of British couples who were at various stages of the intercountry adoption process at the time. The timing of the announcement has never been explained, but in fact exactly coincided with a high profile conviction in the US of Lauren Galindo, an event which appears likely to have directly prompted the UK suspension taken since the position of Cambodia had been under review for some months.

5. Ms Galindo had been prosecuted for improperly facilitating the procurement of visas for Cambodian children being adopted by US nationals. Activities of this kind had also led the US authorities to impose a ban on adoptions from Cambodia but, crucially, special transitional arrangements were made for those “pipeline” couples part way through the process at the time. These involved a dedicated team being sent to Cambodia to fully investigate such cases, in order that they could proceed but be given particular scrutiny. The French authorities have taken a similar approach.

6. Amongst those directly affected by the UK suspension are a group of seven couples (“the Group”), six of whom had already been approved for the intercountry adoption of Cambodian children by their local Social Service Departments by 22 June 2004. The seventh couple was approved very soon thereafter. Of the six that had already been approved, five were awaiting the issue of “Certificates of Eligibility and Suitability” (“Certificates”) from the DfES. The sixth had already been issued with a Certificate, which had been sent on to the Cambodian authorities. Six of the seven couples are pursuing the judicial review of the policy and its application in their individual cases. The seventh has withdrawn from the litigation for personal reasons.

7. Such certificates are sent to foreign adoption authorities to confirm that (from the point of view of the UK authorities) the persons to whom they refer are appropriate persons to adopt. Certificates are issued under statutory powers, but the DfES role is limited: it merely verifies that the couples concerned have been approved by adoption agencies/local authorities, and that police and medical checks have been satisfactorily

---

26 This “action” is mentioned briefly in the uncorrected transcript of the Secretary of State’s oral evidence to the Joint Committee on 3 March but no details are given, in particular the fact that it is the subject of an ongoing legal challenge.

27 Hansard, 22 June 2004 Col WS 60 and 61.

28 Reg 5 of the Adoption (Bringing Children into the United Kingdom) Regulations 2003.
undertaken. Consideration of the circumstances in the country from which the adoptive child may come, or the welfare of individual children is not envisaged by the legislation or relevant guidance.

8. The effect of the suspension in respect of Cambodia was twofold: first, six of the seven couples were told that no Certificate would be issued to them unless their case was deemed “exceptional”; second, the couple to whom a Certificate had been issued was told it would be withdrawn. It was subsequently collected from the Cambodian adoption authorities and is presently at the British Embassy in Phnom Penh. The couple involved strongly object.

9. The approach taken in respect of Cambodia does include provision for the consideration of “exceptional” cases, very much like clause 7(3) of the Bill. But in practice this has amounted to little more than a review of written representations by officials within the Department for Education and Skills (“DfES”). It is understood that only one exceptional case has been permitted to proceed involving an abandoned baby living in a Cambodian orphanage who was subsequently discovered to be deaf: the (somewhat invidious) view of officials appears to be that “special needs” children are inherently less likely to have been trafficked than others. Each of the seven couples in the Group has made extensive representations as to why their cases are exceptional and each has been refused. Both the Minister for Children and DfES officials have repeatedly refused to meet to discuss these decisions.

**Intercountry Adoption**

10. The Government’s stance on intercountry adoption is not neutral: it has committed itself to the Hague Convention and UN Convention on the Rights of the Child, both of which recognise that a childhood spent within a family environment is in a child’s best interests when compared with a childhood spent in an institution, and that intercountry adoption can be a way of realising that aim.

11. Such recognition that intercountry adoption may be in the best interests of a child is, however, wholly missing from the Bill. That is a fundamental flaw because, rather than being required to undertake a balancing exercise between the benefits and problems that may surround intercountry adoption from particular countries, the Secretary of State will simply be empowered to react to perceived problems. This approach is wholly out of step with the welfare principle underpinning the UN Convention and indeed all domestic legislation since the Children Act 1989.

12. Cambodia is a case in point. It is well known that arrangements for care of children within their birth or extended families can break down either through illness (especially the AIDS epidemic) or abject poverty. A great many children are therefore left in overcrowded orphanages and spend much of their childhood there. That is self evidently not in their best interests. Yet nowhere in the Secretary of States’ decision making in relation to Cambodia has there been any recognition that the temporary suspension will inevitably condemn those children who would have been adopted but for this step to such a childhood. In effect, their welfare is

---

29 This is explained in the “Inter Country Adoption Guide”, Department of Health May 2003 ([http://www.dfes.gov.uk/adoption/pdfs/intercountryguidance.pdf](http://www.dfes.gov.uk/adoption/pdfs/intercountryguidance.pdf)) in this way:

“Checking of Applications

1. On receipt of an application the intercountry adoption caseworker in the Department of Health will check that the statutory requirements have been met and the statutory procedures have been followed. They will also check that all the information required by domestic legislation and by the country being applied to has been provided.

2. The caseworker’s checks will ensure that the information required by Regulation 4 of the Adoption (Bringing Children into the UK) Regulations 2003 has been provided in non-convention cases and that the information required by Regulation 11 of the Intercountry Adoption (Hague Convention) Regulations 2003 has been provided in Convention cases. They will also ensure that Regulation 8 and Schedule 1 of the Adoption Agencies Regulations 1983 and Regulation 8 of the Intercountry Adoption (Hague Convention) Regulations 2003 have been complied with as relevant.”

30 The preamble to the Hague Convention provides

“Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, an atmosphere of happiness, love and understanding, . . . Recognising that intercountry adoption may offer the advantage of a permanent family to a child for whom an suitable family cannot be found in his or her state of origin” to which the UN Convention on the Rights of the Child adds:

“The States Parties to the present Convention . . .

Convicted that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding . . .

Have agreed as follows . . .

Article 21

States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall . . .

(b) Recognise that inter-country adoption may be considered as an alternative means of child’s care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child’s country of origin;”
negated altogether, as will that of children in countries affected by the Bill’s proposals should it become law, because the focus is not on the welfare of children, but rather general practices in the countries involved. This is wrong as a matter of principle.

**The Bill**

13. Originally the Bill focussed exclusively on arrangements for contact within the UK. The proposals made were the subject of a Green Paper and extensive consultation. By contrast, at some point before the Bill’s publication in February, Part 2 was inserted. This was not preceded by consultation of any kind.

14. Indeed, the timing of Part 2 is somewhat questionable in that the judicial review litigation was well underway by this point and a key issue in the proceedings is whether the Secretary of State in fact has any powers at present to impose a suspension by refusing to issue (or withdrawing) Certificates. Those acting for her conceded that the judicial review case was arguable and therefore did not oppose permission being granted. On the last permissible date (19 January 2005), written submissions were made to the Court arguing that the suspension was imposed using “implied” powers. It is therefore surprising that the Secretary of State has chosen to sponsor a Bill creating almost identical statutory powers at this very point in time. As yet, she has not indicated whether or not she plans to use the new powers contemplated by the Bill in relation to Cambodia so as to circumvent the possible outcome of the litigation. That would be highly objectionable for obvious reasons.

**Clause 6**

15. Clauses 6(1) and (4) allow the Secretary of State to impose “special restrictions” on intercountry adoptions from a country where she believes (unspecified) “practices” are “taking place” such that it would be “contrary to public policy to further the bringing of children” from there into the UK. The explanatory notes to the Bill give as examples of the practices “the trafficking of children or the removal of children from their parents without consent”.

16. The Group of course recognises such practices exist and deplore them without reservation. The real question, however, is whether the appropriate response is a power which:

   (1) allows the Secretary of State to impose special restrictions without consultation of any kind;

   (2) empowers her to apply maintain such restrictions in place with no right of appeal or other redress for those affected; and

   (3) makes no provision at all for transitional cases, in particular those where prospective adopters are well advanced in the process of adopting from the country which then becomes the subject of restrictions.

17. The absence of consultation arrangements is troubling for a number of reasons. First, it places a disproportionate amount of power in the hands of the Secretary of State and her officials who inevitably cannot be fully informed about the circumstances on the ground in any particular country. Second, whilst the Minister for Children has said in her evidence to the Joint Committee that she will consult with “experts” and the local British posts, the former are not identified and, in the context of the judicial review case at least, the local British Embassy has stated that reaching a considered view on the way adoptions in Cambodia operate, or on the background of any child, is without both its resources and responsibilities. Third, the lack of consultation means there can be no consideration of proposals others might make for measures short of those contemplated by the Bill, such as enhanced Entry Clearance checks, for instance. Ironically, this is the nature of the action taken in Guatemala, also mentioned in the Minister for Children’s evidence to the Joint Committee. The Entry Clearance rules already require British Posts to be satisfied that children are being adopted thanks to the inability of their parents and existing carers to look after then. In Guatemala, the step of DNA testing children and those claiming to be their parents has been taken in that context, as an (unobjectionable) safeguard against trafficking.

18. Similar points can be made about the lack of any appeal route for those affected (and transitional cases in particular—see below). Whilst the Secretary of State may publish the “reasons” for her decision, these can be brief and general, as they were in the case of Cambodia. The underlying evidence about the practices said to be of concern may not be published (and some of this is still being withheld in the judicial review case). Such

---

31 The British Embassy had this to say in an e-mail to one of the Group (Jan Walters-Capp) dated 11 January 2005: “This is a small Embassy with limited resources (both fiscal, and personnel). Carrying out detailed field trips and other background checks to establish the veracity of adoption cases is something that would not fall within our strategic or consular priorities, nor are we resourced for such work.”

32 Immigration Rules, para 316A (vi).
evidence that is made available may be out of date (in relation to Cambodia reports from 2003 are relied upon).

19. Most significantly of all, this difficult and sensitive judgement, closely analogous to a decision about the Human Rights situation in another country, is subject to no independent oversight at all. Judicial review is a possibility, but an expensive one with a narrow focus on the decision making process, rather than the merits of the decision itself.

20. Last, there is no provision for dealing with transitional cases. In the context of the judicial review, the Secretary of State has asserted emphatically that a prospective adoptive couple’s position in the process at the date of the suspension does not make their case in any way exceptional.

21. Yet this last ignores the reality of the mandatory steps which precede any intercountry adoption. First, the prospective adopters must identify the country from which they wish to adopt. They then have to form the links with that country that are a necessary element of demonstrating the cultural awareness and sensitivity that are later assessed as part of the home study process. The home study itself (which can cost up to £5,000 in some areas) then needs to be referred to a local adoption panel. Those panels will need to decide whether, having committed themselves to the country identified, the couple is suitable to adopt from there. All of this involved very considerable delays, in some cases up to years: that is how long it took some members of the Group to secure panel approval in respect of Cambodia starting with the time they first decided to pursue an adoption from there. This, of course, may follow years of trying to conceive a child, including unsuccessful IVF treatments.

22. The temporary suspension and the Bill make no special arrangements for people who have been through this process, been approved by local panels and Social Services Departments, and so have reached the stage where they can be confident their intercountry adoptions will be permitted to proceed only to be told (as the Group were) that a temporary suspension, or restriction, is to be imposed. The lack of consultation arrangements when concerns arise means that they will inevitably assume (as the Group did) that the published DfES information about adoptions from the country to which they have committed themselves can be relied upon.

23. There are very real concerns about the DfES’ ability to adequately discharge a regulatory function in this field of law: after all, its historical role has been limited to processing and verifying paperwork prepared by other UK based agencies in the context of issuing Certificates. Unlike, for example, the Foreign and Commonwealth Office, DfES officers have no special experience of the countries involved. But whoever is made responsible for any such function in future, the Bill must ensure that their powers are subject to proper safeguards and exercised accountably. In particular:

(1) any special restrictions should be imposed only following consultation with those likely to be affected by it including potential adoptive couples part way through the process, local UK adoption agencies and social services departments, institutions working within and the government of the country concerned;

(2) there should be a right of appeal to an independent tribunal with access to expert evidence against the imposition or maintenance of special restrictions, such right to exercisable by those directly affected by the restrictions; and

(3) separate arrangements should be made for transitional cases (the numbers of which are never likely to be high) by which they will be permitted to proceed with intercountry adoptions subject to intensive checks being made in relation to the children they may ultimately adopt to verify that they have not become potentially available for intercountry adoption as a result of the practices that have given rise to concern.

24. The Joint Committee may wish to note that open proposals to settle the judicial review litigation have repeatedly been made along the lines of point (3) above. They have been repeatedly rejected by the Secretary of State.

**Clauses 7 and 8**

25. These clauses empower the Secretary of State to create special restrictions by means of regulations. No draft regulations have been published, so it is difficult to comment at this stage. The explanatory notes indicate, however, that the intention is to prevent “any step” (including administrative steps for which there is no specific statutory authority) which would otherwise be taken to facilitate the intercountry adoption. Clause 8 allows the introduction of additional steps into the existing process, though again it is quite unclear what is contemplated.
26. Very similar criticisms can be made to those set out at paragraph 11–13 above: this clause also confers a huge amount of power to a body of questionable expertise in the field, without the need to consult those affected and without independent expert oversight. The Group believes that the specifics of any special restriction should be consulted upon and amenable to challenge by way of an appeal to an independent tribunal.

27. As for sub clause 7(3), which allows regulations to be made for the processing of “exceptional cases”, the Group would like to draw the Joint Committee’s attention to its own experience of the “exceptional cases” procedure presently operated in relation to the suspension of Cambodian intercountry adoptions.

28. The procedure has the following features:

(1) exceptions are not made for transitional cases;

(2) officials involved in making decisions have no particular expertise in Cambodia, indeed several key officials have not in fact visited that country;

(3) there is no facility for affected persons to meet any of the officials involved: any case for “exceptional circumstances” must be put in writing and receives a written response only;

(4) the case for refusing to make an exception is not made known to the prospective adopters, so they have no opportunity to seek to persuade the decision maker to adopt a different course, before a refusal is communicated;

(5) where particular sources of information or expertise have been identified (for example, points of contact at reputable Cambodian orphanages, retired officials who were responsible for processing transitional cases when the US imposed a suspension) these have not been followed up;

(6) where no particular child has been identified by the prospective adoptive couple, the decision makers have universally refused to make an exception to the temporary suspension policy, arguing that it is impossible to know whether any child that might be identified would be the subject of concerns; and

(7) there is no right to appeal a refusal to an independent, expert tribunal, only the possibility of judicial review (which does not consider the merits).

CONCLUSION

29. Child trafficking, improper financial gain and other similar unethical practices that can be associated with intercountry adoption are rightly a source for concern. But so are the lives of children in developing world countries which lack adequate alternative arrangements enabling them to be raised in a loving family environment. The Bill simply fails to strike any meaningful balance between the two (let alone the informed, sensitive, welfare focussed one demanded by the context and the UK’s international law commitments). Nor does it recognise that British couples who have committed themselves to intercountry adoption from a particular country in good faith have a legitimate interest in being permitted to proceed albeit subject to strict, child focussed safeguards, even where there are general concerns about that country.

30. Instead, the Bill recreates in statutory form, the blunt instrument used to prevent adoptions from Cambodia from June last year onwards. But for that instrument being used, seven or eight children who are presently living in Cambodian orphanages would now be living in a family environment in the United Kingdom, looked after by couples who have been professionally assessed as fully suitable to adopt children from that particular country. Enacted in its present form, the Bill would allow that injustice to be perpetrated against many others without prior consultation, or expert input into the decision, or independent scrutiny, or accountability.

31. The Joint Committee is asked to express its grave concerns about this very real possibility and press for the changes canvassed in this submission.

14 March 2005
Memorandum by Criminal Law Solicitors’ Association

INTRODUCTION

The joint committee on the Draft Children (Contact) and Adoption Bill is considering the Bill and has invited the submission of written evidence.

The Criminal Law Solicitors’ Association is the only national association entirely committed to professionals working in the field of criminal law. The CLSA represents criminal practitioners throughout England and Wales and membership of the Association is open to any solicitor—prosecution or defence—and to court clerks, qualified or trainee—involved with, or interested in, the practice of criminal law. The CLSA is responding to the request on behalf of its members.

This response is limited to the question of enforcement of contact by civil orders through the use of criminal penalties.

RESPONSE

The courts have the power to send a parent who disobeys a contact order to prison for contempt. However, that power is rarely used and the Appeal courts have expressly disapproved its use.

The Bill proposes the introduction of enforcement orders as a means of punishing a defaulting parent who fails to comply with a contact order made by the courts for the benefit of a child.

These orders are limited to an unpaid work requirement (formerly a community punishment order) and a curfew requirement (formerly a curfew order). These are new orders given to the criminal courts by the Criminal Justice Act 2003 but intended here to be imposed (and enforced?) by the civil courts. An option to impose a compliance monitoring order (does this include by “electronic tag” as that is not clear—see Clause 3 11H (7)) is also included in the Bill.

The mixture of the criminal and civil jurisdictions seems to us to produce a number of potential difficulties:

1. **Sanction**

   The ultimate sanction in a criminal court for non compliance with a community order is custody but here the sanction is to make the order more onerous or to impose a second order. If that further order is not adhered to there is no tougher sanction. There seems to be no power to impose a fine for non compliance with an enforcement order and certainly no power to impose custody, unless it is intended to revert to the law of contempt. Is it envisaged that there may be a problem with ensuring compliance with enforcement orders?

2. **Venue**

   The remainder of this response assumes that the provisions require breach proceedings in respect of these criminal sanctions to be heard in the civil court. If we are wrong in that assumption then different considerations (although some are linked) will apply.

3. **Burden of Proof**

   What standard of proof is to apply? For breach of an order created by the Criminal Justice Act 2003 the criminal standard will apply in the criminal courts but if the enforcement is to be through the civil court the civil standard might be expected to apply. A defence to breach proceedings might succeed in the criminal courts but fail in the civil court. Is that the intended consequence?
4. Attendance

How would the defaulter/respondent/defendant be compelled to attend court to be dealt with for the breach? Is it intended that a warrant should be issued (as happens in the criminal courts?) If so, under what power?

5. Proof in Absence

Following on from that, is it intended that the civil court will have the power to proceed in the absence of the respondent in proceedings for breach? If so, is it considered that will comply with the Human Rights Act?

6. Trial for Breach

(a.) In the criminal courts, trials for breach will take place with the normal safeguards for the defendant in place for criminal trials (including the disclosure rules). If “prosecutions” for breach are to take place in the civil courts similar safeguards will not be present in what will otherwise be quasi criminal proceedings involving as they do alleged breaches of criminal sanctions. Is that considered to be acceptable?

(b.) Very often there are disputes as to records kept by the probation service. Moreover, there is current uncertainty as to what acts or omissions actually amount to a breach of a community punishment order. We presume that it is intended that any Divisional Court ruling on this, or any other point relating to the criminal jurisdiction, will be equally admissible in proceedings taken for breach in the civil court.

7. Performance

In reality the defaulter is likely to be the parent with residence and consequently the care of children. There are practical difficulties in requiring such a parent to perform unpaid work. These problems are often seen by the Probation Service and the criminal courts with single parents and acceptable absences are common for child care issues. Who would assess the defaulting parent as suitable to perform such work (or additional work) or comply with curfew hours (presumably covered by Clause 3 “11H (2), (3), (4), (5) and (6)” but please confirm) and where would the line be drawn for the “reasonable excuse” defence (see Clause 3 (1) “11G (3)) in these circumstances?

8. Prosecutors

(a.) Which agency will “prosecute” any breach of the original or subsequent enforcement order? It seems that s 198 of the CJA 2003 will apply so that a probation officer will be responsible for enforcement. Will he be charged with the responsibility of collecting, assembling and presenting the evidence? In that case, the cost of enforcement will be borne by the Local Authority. Has an analysis of enforcement costs (and indeed the costs of the performance of the orders) been carried out and passed on to the Local Authorities?

(b) Probation officers will need to be trained if there is to be a difference in jurisdiction, procedure and law in these cases from the normal jurisdiction in which they act as prosecutors.

(c) Moreover, training will need to be given on civil law in so far as it relates to the definition of “reasonable excuse” in contact cases. Has that been costed?

(d) The same considerations apply if it is intended to permit electronic tagging as a means of monitoring compliance. The prosecuting agency is the private monitoring company. Points (a) and (b) above will apply equally.

(e.) If, following a report from the probation officer supervising the unpaid work requirement or the private company monitoring compliance with a curfew requirement, it is intended that an officer of CAFCASS will refer the matter back to court (see Schedule 1 Para 3 (3) which inserts s 198 (1A)), who will be responsible for presenting the breach proceedings to the court? Is it intended that the breach will be “proved” by report from CAFCASS? What will happen in the event of a contested breach? Will the court adopt its own procedure and call such evidence as it thinks appropriate? Will CAFCASS be represented in the same way the probation service is represented in the criminal courts?

(f.) It is noted that CJA 2003 s.198 (1) (3) includes amongst the duties of the “responsible officer” (the probation officer) the taking of enforcement action. We are unclear, therefore, with whom lies the responsibility to “prosecute” breaches.
9. **Representation of Respondent/Defendant**

(a.) If it is anticipated that the respondent/defendant should be allowed public funded representation, is that to be means tested (as it would be in the civil courts) or non means tested as it would be in the criminal courts?

(b.) If there is to be public funded representation available, whether means tested or not, have the necessary plans been made by the Legal Services Commission to amend the regulations to permit such representation (we are mindful of the difficulties caused by recent changes in the law relating to ASBOs and to Sex Offender Orders where provision was overlooked).

(c.) Has the potential cost of public funded representation been analysed and the necessary provision put in place to increase the appropriate budget?

(d.) If the respondent/defendant is successful in defending an alleged breach, will he be entitled to a central funds order for costs as he would be in the criminal courts? Equally, against whom should he or she apply for wasted costs, if appropriate?

10. **Religious Beliefs**

Not having been party to any previous consultation, we are unaware of the subtleties of drafting which have required conflict with religious beliefs to be mentioned at Clause 3 “11H (3) (a)” but then specifically excluded by omitting CJA 2003 s.217 from the Bill. We simply point out a potential anomaly.

March 2005

**Memorandum by Philip Else**

1. With respect to the call for evidence for consideration by the Joint Committee on the above Draft Bill, I would like to submit the following, drawn from my experience as a father of two children who have been subjected to the existing Family Law format’s abuses, and the research into the Family Law environment and involvement I have had with the Family Court and other fathers in similar or worse positions to myself.

The evidence presented here will, I believe, help give guidance towards creating satisfactory and enforceable contact for children and non-resident parents, and hopefully create situations where more split families are able to come to a mutually beneficial arrangement. When these situations are arranged so, enforcement and penalisation should be less of an issue for the Courts to have to deal with. This evidence deals primarily with issues of intent and clarification.

2. Primarily, I believe the Committee should recognise and ensure that the following living myths are given urgent attention and clarification.

A: A definition of what a child’s best interests are. This catch-all is used by all and sundry as a way of denying a child, or one parent or another, a fundamental right. However when challenged as to why it would not be in the best interests of a child to, for example, share time equally with both parents, no one can supply evidence or reason. This is a case of “one rule for some”, for when a parent argues that it would not be against the best interests of a child to share time equally between parents, the so-called experts deny any such possibility. It should be clarified just what officials consider to be “in the best interests of a child”.

B: That the Law is not gender biased. Everyone is told that the Law is not gender biased, however it is plain to many an abused father that the exponents of the Law are prehistoric in outlook and unrealistic in process. The socially isolated judge behind the bench and the ill qualified, personally motivated CAFCASS officer are gender biased, putting both in breach of the Law’s baseline tenets. Yet these breaches are not challenged, and indeed due to the secrecy of the Family Court system, cannot be challenged. It should be clarified that both parents must be treated and regarded equally, and that openness is required to ensure that such treatment is visible.

C: It is considered throughout the system that the parents know what is best for their child, yet in a majority of parental separation cases that go to court, one parent or the other gains a prominent and important upper hand by removing the child from the other parent, ensuring that from then on, his (it is usually the father) voice is not heard by the Family Court. It should be clarified that both parents must get equal say at all stages of the process.

3. In the penalising of a parent who defies an order to allow contact for the child with the other parent, a greater emphasis should be made upon the overturning of A Residency Order in favour of the other parent. It is true that fines and imprisonment are impractical in all but the most serious and repetitive cases, and it is also true that community service and curfews will be of use. However, it should be clarified that the child...
should be made available to the other parent during such penal periods, and not hidden away with the resident parent’s family, for instance. A ready threat to overturn the defaulting parent’s security of a Residence Order can be a shocking and influencing factor, and should be wielded liberally.

4. In many cases of parental conflict, an accusation of abuse is levelled at one parent by the other. Whether this has any founding or not, the accusation should be treated as a subject for Criminal action, and not a factor for the Family Court to deal with. The judge who is trying to decide whether a child can see a parent should not be distracted by the petty squabbles of unstable minds. False accusations of abuse must be dealt with, as are all other false accusations. It should be stated that the Family Court will not deal in such matters.

5. I note that the role of CAFCASS is to be redefined slightly. It should be stated that the arbitrary opinion of the CAFCASS officer is no longer to be treated as the deciding factor in cases of contested joint residency applications. CAFCASS officers are not qualified, nor should they be called upon, to either decide upon, or influence the fate of children. Their role should be stated and clarified as being confined to the ascertaining of whether the domestic arrangements of each parent are suitable to support the child, whether or not any threat exists to the child from either parent or their environment, and advising the parents where problems may be evident.

6. Contact could be attained and reinforced by the removal of the secrecy that binds Family Law in archaic constraints. Currently, a belligerent parent can get away with saying anything to a Family Court judge that will negatively affect the chances of the child seeing his or her other parent. There is no recourse to extract truth by cross examination or conflicting witness statements. The power resides with a resident parent to accuse the non-resident parent of abuse, harassment and attempted kidnap at whim. The Committee should state that openness is the only way to remove vile behaviour and ridiculous judgments, thereby ensuring that the best interests of the child are maintained.

27 February 2005

Memorandum by the Family Rights Group

This paper is the result of collaborative work amongst organisations that support parents and other family members to receive the services they need to care for their children, particularly at times of transition or crisis. These include the Family Policy Alliance, comprising Family Rights Group, Family Welfare Association and Parentline Plus, and National Family Mediation. Although our expertise varies because we represent diverse perspectives, we nevertheless share a common view in our response to the Bill, although some of us would place greater emphasis on some of the recommendations than others. Some of us have also submitted our own separate responses in addition to endorsing this one.

Executive Summary of Recommendations

1. In order to address real concerns about the availability and suitability of parenting programmes referred to the Bill, alternative means of providing support must be explored and resourced including telephone based services, and individual support for parents to overcome their own difficulties (for example counselling and therapy). There also needs to be a clear funding stream identified, and guidance from government, to support such services at a local level, otherwise these proposals will fail.

2. Secondary legislation/guidance should spell out precisely what it is envisaged that a CAFCASS officer could do to “facilitate compliance” in clause 3 and under what authority, and how children’s views will be taken into account. There should also be minimum standards about the facilities available to parents spending time with their children in supervised contact centres.

3. (3)(b) should therefore be deleted, otherwise the authority of the court may be, and perhaps more importantly may be perceived to be, further undermined.

4. The Bill should be amended to:
   — Require all prospective applicants for an order under s 8 CA 1989 to attend a meeting with a mediator to discuss whether mediation is suitable before they may issue their application; and
   — Empower the court to direct the parties to attend a meeting with a mediator during the course of proceedings if it is appropriate to do so.

5. The Children Act 1989 should be amended to insert a new sub para in s 2:
   “Notwithstanding the provisions in s 2(7), when parents separate, they shall consult each other about all important decisions regarding the child’s living arrangements and upbringing, and in the absence of any court order to the contrary, shall make arrangements for the child’s care which enable him/her to be brought up and raised by both parents.”
1. **Introduction**

We are concerned that the overall message could come across to parents as “you don’t understand your children properly and that makes you bad parents”. We believe that a much more helpful message is “divorce and separation cause turmoil and upheaval for all concerned. There are services available which will help you negotiate your way through the myriad of challenges you may encounter in such a way as to minimise the impact (and potential damage) to all the family, particularly your children”. With this in mind we make the following specific comments and proposals:

2. **Contact Activity Directions/Orders:**

Whilst we believe that referrals of parents to classes to help them parent better understand the negative impact of divorce and conflict on their children and themselves might be hugely beneficial for some, we have some serious concerns about both the availability of such programmes, and their suitability which may seriously undermine the successful implementation of these proposals. Our concerns are:

i. Lack of provision in most parts of the county.

ii. Lack of any uniformity or consistency of any provision, and no agreed quality standards or kite marks to enable commissioning of quality provision.

iii. Lack of agreement and of research evidence on what would constitute appropriate provision. Whilst the current Family Resolutions pilot will test out some of the issues of appropriateness and types of provision, any plans for roll out will have to take into account the current lack of capacity nationally to provide these programmes to any consistent or agreed standards.

iv. There are considerable practical and operational difficulties of group provision—finding enough people to join a group who can make the time; and there are issues of child care, travel, location and timing to consider.

v. On separation, some parents are in such emotional turmoil that they will be unwilling and/or unable to participate in a group setting. Indeed the inclusion of people with very high levels of individual distress and need, can make for a group experience that is less than satisfactory for other group members. Furthermore, for some parents, the issues causing them difficulty are less about their parenting, or their insight into the impact on their children, and more about their own emotional histories and difficulties.

vi. Resources will have to be available support capacity to deliver such programmes, without which these proposals will fail. Indeed, Parentline Plus’ experience of providing local face to face parenting programmes strongly suggests that obtaining local statutory sourced funding for development is difficult, time consuming and rarely at full cost recovery.

**Drawing on our collective experience we make the following recommendations to overcome these obstacles:**

i. Alternative means of providing support must be explored including telephone based services which are popular and effective: Parentline Plus offers telephone based groups, using conference calls to overcome some of the practical constraints. Evidence suggests that people can gain as much from telephone based work as from face to face work. However this requires different training for those facilitating groups, and a different approach to resources and materials for the groups.

ii. Parents must also be able to access individual support, including counselling and therapy to help them overcome their own difficulties as well as understanding and minimising the impact of these difficulties on their children.

iii. There needs to be a clear funding stream identified by government to support such services, and they need to be built into guidance and regulations around local children’s centres, extended schools and other provision so that local areas understand that they are expected to commission such services, otherwise these proposals will fail.
3. Facilitating and Monitoring Contact—The Role of CAFCASS

Whilst we support the view that every effort should be made to support contact arrangements, the additional responsibilities placed on CAFCASS officers to undertake this work may be unrealistic given the high demands already placed on an under resourced service.

We are concerned that the Bill should not include provisions which appear redundant, as this can inadvertently encourage someone who wishes to flout a court order, for example the provision in clause 3(5)(a) relating to CAFCASS facilitating compliance with a court order. If this provision is retained we recommend that secondary legislation/guidance should spell out precisely what it is envisaged that a CAFCASS officer could do to facilitate compliance, and under what authority, otherwise it should be removed. Further, it should clarify how children’s views about the situation will be ascertained elicited and taken into account, and their should be minimum standards about the facilities available to parents at contact centres, for example that there should be the means for parents to provide their children with snacks and refreshments when they spend time together even in a supervised setting.

4. Enforcement of Contact

Similarly, we are concerned that the proposal that the court can make a curfew order is fundamentally flawed. Its purpose is to enforce a contact order which has been flouted, but ironically it is redundant precisely because there is no mechanism for enforcing the curfew order itself. We therefore recommend that clause 3(3)(b) should therefore be deleted, otherwise the authority of the court may be, and perhaps more importantly may be perceived to be, further undermined.

5. Omissions from the Legislation

5.1 Mediation

Whilst the general approach of “carrot and stick” in the Bill to support children having a continuing relationship with both parents following separation is welcome, we consider that the potential role for mediation is under played. Indeed in our experience, it is often the adversarial process itself, which becomes part/most of the source of conflict in highly disputed cases. There is therefore a pressing need to divert BOTH parties away from litigation preferably before an application is issued to court, but failing that, even mid-way through proceedings, to mediation which can assist them to engage in building a child centred working relationship for the future.

Mediation is child-centred and future focussed, with an ethos of seeking co-operative parenting between the parties with their children’s welfare, rather than recriminations about the past, foremost in their minds. The mediator is impartial, and discussions between the parties are legally privileged. This creates an environment in which it is safe for parties to say what they really think, talk through different options, and have an opportunity to reach a compromise which addresses their children’s needs, without feeling coerced. As such the parties have a real opportunity to “own” the agreement reached, and are therefore more likely to adhere to it than if a decision is imposed upon them.

In highly contested contact disputes this may at first appear naive and unrealistic but the reality is that if parties mediate and the dispute continues to be highly conflicted, the mediator is professionally bound to warn the parties of any emerging child protection concerns s/he has about the conflict between them potentially causing their children emotional harm. This warning in itself can have the effect of halting parties in their tracks such that they begin to focus on solutions rather than on being in conflict with each other.

At present a legal anomaly exists: parties who seek public funding to cover the costs of their application to court have to meet with a mediator to discuss whether mediation would be an appropriate way sorting out the arrangements for their children. It is only if they, and the mediator, agree that mediation would not be suitable that they can be awarded public funding to take the matter to court. There is no such requirement for non-publicly funded applicants to meet with a mediator for a similar discussion before they issue the Form C1A, which initiates their application to court. In our view this not only creates a two-tier system, but is also a missed opportunity for diverting parties away from litigation before they issue. Given that 90 per cent of applications for s8 contact orders settle at the first hearing, we question what possible justification there can be for not requiring all parties to meet with a mediator before they issue an application in court. This would not increase spending for the public purse as the client group it would affect are already paying privately for their legal costs (otherwise they would be applying for public funding), hence they would fund the costs of their meeting with a mediator.
We therefore recommend that the Bill should be amended to:

— require all applicants for an order under s8 CA 1989 to attend a meeting with a mediator to discuss whether mediation is suitable before they may issue an application for a s8 order (ie extend the provisions of s29 Family Law Act 1996 (FLA)—now s11 Access to Justice Act 1999, to all parties not just those in receipt of public funding); and

— empower the court to direct the parties to attend a meeting with a mediator during the course of proceedings if it is appropriate to do so—ie implement the provisions of s13 FLA 1996, thereby adding mediation to the list of potential interventions to which the court can refer the parties in clause.

There is an added-value to this—not only would it reduce the numbers of applications which are issued in court, often unnecessarily, but the mediator can also refer them to other services which are available to meet the needs of their children and their family arising from separation at an earlier stage than is envisaged with the contact activity provisions in the Bill, for example: telephone based services, parenting programmes and support services, counselling for adults and children, advice on housing and benefits, debt counselling etc.

5.2 Statutory definition of exercise of parental responsibility following separation

The current publicity amongst campaigning groups which advocate 50-50 parenting raises important issues which need to be addressed, although in our view the solutions are not as they propose.

It is clear that the power dynamic between the parties is frequently defined by which parent has “got” the children. It is often the mother, but not always. If parties have been separated for some time, the status quo of the arrangements made immediately after separation have become fairly entrenched which makes it difficult for parties to change the arrangements without causing further disruption to the children. In some, but not all, cases this can create a power imbalance between the parties when it comes to re-negotiating the arrangements.

Following the recent amendment to the Children Act 1989 (inserted by s111 Adoption and Children Act 2002) most parents will have parental responsibility for their children in the future. In our view the law needs to define in statute how that PR should be exercised post separation so that the “one with the children” is not simply dictating to the other what will happen. This is not the same as 50-50 shared care. Indeed would be inappropriate to set out in law what the living arrangements should be in each case—these should be determined according to the child’s needs and family circumstances in each case. But it does raise a presumption of equality in relation to decision-making for children unless this would not be in the child’s best interests. This would prevent one party from unilaterally dictating to the other what will happen to the children, whilst simultaneously preserving the paramountcy principle.

This is not unproblematic in legal terms. Importantly, the Children Act 1989 confers on each person with PR the right to exercise their PR independently of anyone else with PR. This enables them to care for a child without constantly checking about day to day matters with the other parent (eg signing for their child to go on a school trip, whether their child can go on a day trip to Calais with a friend etc). However this right to act autonomously is precisely what gives the party who has “got” the children carte blanche to dictate to the other what they can and cannot do with the children. The provision regarding autonomous PR therefore needs to be qualified so that there is a requirement on separated parents to consult each other about important issues concerning the child’s upbringing, such as: change of school, relocation to the other end of the country, immunisations. Other “big” issues which parents consider require joint consultation in relation to their children could be set out in the parenting plan they draw up together.

The need for this statutory definition has been highlighted by recent case law which has had to address such questions as they have arisen in contested applications under s 8 Children Act 1989. But it is inadequate to leave it to case law to define how PR should be exercised post separation. The law should state clearly and

33 Draft parenting plans have recently been issued by the government for consultation—see www.dfes.gov.uk. We have attached our revised version of that draft which addresses all the key issues which parents need to agree about the arrangements for their children following separation—including questions which address joint consultation.

34 See for example (Re: C: Welfare of Child Immunisations) [2003] 2 FLR 1054.
unambiguously that one person cannot act unilaterally on big questions concerning the raising of a child, unless authorised to do so by the court. Hence we propose that the Children Act 1989 be amended as follows:

s2 CA: insert new sub para in this section:

“Notwithstanding the provisions in s2(7), when parents separate, they shall consult each other about all important decisions regarding the child’s living arrangements and upbringing, and in the absence of any court order to the contrary, shall make arrangements for the child’s care which enable him/her to be brought up and raised by both parents.”

By qualifying the way in which PR may be exercised, this amendment is intended to import the notion of joint decision-making from pre Children Act legislation, which was all but lost when joint custody was abolished and PR introduced. It explicitly states what already occurs in the non-conflicted cases, yet does not undermine the autonomy of each parent to make daily unilateral decisions about the child’s care independently of the other because s2 (7) remains intact.

The effect of our proposal would be that in most cases negotiations between parents would be eased if they did not have to discuss the relative merits of each of them having a say in, and control over, the arrangements. With such an amendment, the starting point for discussions between the parents would therefore be the practicalities of their child’s needs and lifestyle and how the best arrangements can be devised in the particular circumstances of their albeit separated family life, rather than who has the right to settle the arrangements.

Moreover, by importing the statutory presumption in favour of continuing relationships with both parents from the non-implemented Part II of FLA 1996 (and from well established case law) this amendment sets out a requirement for consultation and co-operation between parents when they separate irrespective of whether they go to court. This should therefore militate against the power imbalance which arises when one parent (the one with the children) purports to dictate against the other (the one who hasn’t got the children), and sets out an expectation that both parents will be equally responsible for, and involved in, bringing up the child.

Clearly some parents will not co-operate or consult with each other in accordance with this presumption. Such cases will inevitably end up before the courts in disputed applications for prohibited steps and specific issue orders as they do now, but hopefully, with the general emphasis on parental co-operation to make arrangements for their children in the programme of materials and services outlined in the Green paper (including the parenting plans referred to above) these will be vastly reduced in time.

We conclude by saying that the purpose of this amendment is to address the reality of what happens on separation when the options on the table are being at least partially skewed by the status quo favouring one party at the expense of the other. It is the resulting perception of a power imbalance, which generates much of the anger and frustration that fuels many of the highly contested disputes. If the government wishes to reduce the numbers of contested cases, then it must not overlook one of the key sources of such disputes.

March 2005

Memorandum by Rt Hon Frank Field MP

Summary

1. This submission affirms the normal practice that children have the right to see both parents, irrespective of whether the parents live together. It also recognises that any contact between a child and his/her parents must be in the child’s best interest.

2. It is the belief of this submission that the proposed measures to widen the powers of the courts to ensure that contact orders are obeyed, or otherwise to ease their implementation, are long overdue and that these measures should be implemented without delay. If the measures relating to adoption included in the draft bill are at contentious, the Government should push ahead with the new measures relating to child contact as promised in the 2004 Green Paper: Parental Separation: Children’s Needs and Parents’ Responsibilities. The Government should also ensure that the measures are implemented effectively from the outset.

3. The proposed provisions for enforcement outlined in the draft bill are sufficient where a court contact order has been breached and compulsory mediation has failed. Where a court order has subsequently been made re-establishing the right a child has to see both parents, both parents should be responsible for ensuring that this is adhered to.

4. This submission welcomes, where a court contact order has been breached by a non resident or resident parent, the proposals to introduce community based “enforcement orders” for unpaid work or curfew; or the awarding of financial compensation from one party to another (for example where the cost of a holiday has been lost).36

5. New powers which will enable the courts to direct parties in a contact case to attend information meetings, meetings with a counsellor, and other activities designed to deal with contact disputes, should also be used as enforcement measures in conjunction with the more punitive measures outlined in Clause 3 of the Draft Bill.

Introduction

6. The Children Act Sub-committee of the former Lord Chancellor’s Advisory Board on Family Law, chaired by Rt Hon Mr Justice Nicholas Wall issued a consultation paper in March 2001.37 In this paper the question was put as to whether the courts should have a broader arsenal of measures to use against the residential parent who fails to comply with a contact order. The majority of the responses to the paper placed increasing emphasis on therapeutic approaches to the enforcement of contact orders, including such measures as counselling and mediation.

7. In February 2002, the Children Act sub-committee published its report, Making Contact Work outlining the general dissatisfaction with the legal process as a mechanism for resolving and enforcing contact disputes:

“The courts need to be given the powers to make orders to engage a number of those services identified by CAFCASS, not all of which relate directly to the enforcement of an existing order, such as ‘supervised Contact Centres, child counselling, perpetrator programmes, information giving meetings prior to initial directions and psychological assessments.’ We strongly support and recommend the court being given the powers to make orders which enable these resources to be engaged.”38

8. The Government produced a Green paper in response to the Children Act sub-committee’s report in July 2004. The Green paper: Parental Separation: Children’s Needs and Parents’ Responsibilities recognised that for those cases were there is a failure to comply with the terms of the contact order, fuller and more diverse enforcement mechanisms are needed by the courts.

9. The Green Paper also announced that the Government proposed to legislate at the earliest possible opportunity to provide additional enforcement powers which would allow:

(a) Referral of a defaulting parent in a contact/residence case to a variety of resources including information meetings, meetings with a counsellor, or parenting programmes/classes designed to deal with contact disputes;

(b) Referral of a non-resident parent who has been violent or who has breached an order to a relevant programme

(c) Attachment of conditions to orders which may require attendance at a given class of programme

(d) Imposition of community-based orders, with programmes specifically designed to address the default in contact

(e) The award of financial compensation from one parent to another (for example where the cost of a holiday has been lost)39

10. Clause 1 of the Draft Children (Contact) and Adoption Bill outlines what is meant by “contact activities”, which include those activities outlined above. Such activities would be used in advance of, or as part of contact orders, and are not technically enforcement measures as outlined in Clause 3 of the Draft Bill. It is the opinion of this submission that the contact-focused activities outlined in Clause 1 should be used not just in relation to a contact order being made, but also when a contact order has been broken. This could be in the form of another contact order or as part of an enforcement measure.

36 Department of Education and Skills, Draft Children (Contact) and Adoption Bill, Cm6462, February 2005, Clause 3 and Schedule A1.
38 Lord Chancellor’s Department, 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, 8 February 2002, p119 para 26.
11. Most recently, the Constitutional Affairs Committee in their report *Family Justice: the operation of the family courts* HC141, 2004–05 welcomed the Draft Bill’s proposals and commented that:

“It is pointless for the courts to make orders if those orders are not then enforced. There is legitimate public interest in ensuring that where an order is made by the court it is subsequently obeyed. Failure to enforce contact orders is the basis of some of the claims that the system is ‘biased against fathers’.”

12. Where domestic violence is not involved, the law should be the last resort—negotiation, mediation and conciliation need to be exhausted first.

13. It is the opinion of this submission that the Government should put in place the measures outlined in the Draft Bill and also that effective provision should be made for compulsory mediation prior to any legal proceedings when a parent has applied to the courts for contact.

14. Access to both parents should become the legal presumption, with deviations from this norm being brought before the courts, as would have been the case had the government implement section 11(4) of the Family Law Act 1996.

15. The Courts should also be given a range of (a) non-punitive (b) punitive and (c) extra punitive powers for use as part of a contact order or as a result of a court order having been breached by either the resident or non-resident parents.

16. These stages should necessarily be imposed incrementally, with the court taking account of:

(a) Previous powers imposed
(b) Previous breaches of the court order
(c) The severity of the breach of the court order
(d) Other factors that the court deems to be reasonable.

17. The courts should be able to impose the following range of non punitive and punitive powers when a contact order is breached according to the nature of the breach and in light of those factors outlined above:

(a) Referral of a parent to a variety of services, including information meetings, meetings with a counsellor, parenting programmes/calluses designed to deal with contact disputes.
(b) Referral of a parent to a psychologist or psychiatrist
(c) Referral of a parent to an education programme
(d) Referral of a parent to a perpetrator programme
(e) Placement of a parent on probation with a condition of treatment or attendance at a given class of programme
(f) Imposition of a community service order, with programmes specifically designed to address the default in contact

18. It also the opinion of the submission that the range of powers set out above may be used prior to the following extra-punitive powers. Such measures would be deemed to be of “last resort”:

(a) Fines
(b) Imprisonment
(c) Transfer of custody from the resident to the non-resident parent (where it is in the best interests of the child and not merely a means of punishing the parent.)

CONCLUSION: EFFECTIVE IMPLEMENTATION

19. The aim of the reform must be to change behaviour rather than simply to punish transgressors. A quick and concerted use of these new powers will be crucial to the change in behaviour that is necessary. Parents unreasonably preventing the other parent gaining access to their children need to know that the power relationship has been transformed and that the courts will act in a determined way to put the interests of children first. Two actions are necessary to maximise the impact of these new measures. First, before any date of implementation is given, the Government must ensure that the machinery to implement each and every

---

41 Extra-punitive powers provided for by—(i) the Contempt of Court Act (1981), section 14 and (ii) the Children Act (1989), section 10.
sanction is in place. Second, and only then, a concerted effort needs to be made so that the new powers are very quickly used by the courts throughout the country and that these moves receive the widest publicity.

20. The comparison with the use of Anti-Social Behaviour Orders is relevant. The aim of ASBOs is to curtail yobbish behaviour and yet their implementation failed to have the immediate impact that was hoped. What was required was in the early days for a quick rush of ASBOs so that they created an “electric shock” type effect on yob culture. This has not happened. The early ASBO implementation was fraught with difficulties. There was much talk in the media that at last the balance of power on the street would shift from the yob back to the decent citizen, yet during the first year of operation only 104 ASBOs were issued and the target groups against whom the orders were designed, soon realised that they once again had little to fear.

3 March 2005

Memorandum by Martyn Ford

Evidence for the Committee

1. I write in my capacity as a father and a family law barrister, with over 20 years’ personal and professional experience of contact/residence [access/custody] matters. It is on this issue alone that I make these submissions.

2. Over the last few decades, the way the judiciary in particular, and the legal system in general, has dealt with these issues has been a disgrace.

3. This Bill is fatally flawed, and will only have a marginal impact in improving a truly dreadful situation.

4. At the root of the problem lies the assumption that a child [in circumstances where parents are separated] should have a main home, and be a visitor to the other home. This arrangement, which predominates in the overwhelming majority of cases, enables the parent in control [usually the mother] to make life as difficult as possible for the other parent [usually the father]. The father has to suffer the heartache of long absences from his child, the soul destroying and humiliating experience of being told when he can see his child, and the marginalisation of that relationship.

5. Where there is a main residence, the situation works only where the mother is reasonable and constructive. It owes little to the courts, or any other agency. This Bill, with its laughable proposal that one remedy is that a parent can be made to pay the cost of a lost holiday, will be almost wholly ineffective.

6. The way forward, which this Bill should embrace, is the principle of shared and equal parenting. This must be the starting point. This entails a child having two homes, both of equal value, and this in turn requires that a child’s time should be divided more or less equally between his/her two homes. A child can then have a proper relationship with both parents.

7. This is not, contrary to what the Rt.Hon. Margaret Hodge has said publicly, and the Green Paper also states, a “one size fits all” approach, any more than saying that a child should only have contact where it is safe [as the Green Paper states unnecessarily and repetitively]. It is a sine qua non if a parent is to have a meaningful relationship with his child.

8. The legislation should be amended to make it a rebuttable presumption that a child should have equal and shared parenting. The standard arrangement to be aimed for would then be shared residence. If that were to evolve as the norm, the benefits to children, to family life and to society, would be enormous.

1 March 2005

Memorandum by Dr John Furness

I have received an e-mail requesting written evidence to this committee. Thank you for this opportunity and for considering my evidence.

I am a consultant paediatrician with professional and personal experience of contact difficulties following parental separation. I do not wish to submit evidence on Part 2 of this draft bill, “Adoptions with a Foreign Element.” I do wish to comment on Part 1, “Contact with Children.”

I agree that the underlying principle should be the, “Best Interests of Children.”
The principles for proposed facilitation and monitoring of contact are appropriate. However I do not think that it is sufficient for the monitoring of contact by CAFCASS to be at the request of the court. It would be in the best interests of children if all contact orders were monitored. Neither do I think that the courts and legal profession are appropriate places for mediation. The adversarial nature of law leads to conflict. The alternative is to enforce existing law where medication has failed or is refused. I discuss this at the end of my submission.

I do not believe that CAFCASS is an appropriate body to facilitate and monitor contact. This is because of the loss of confidence in CAFCASS of many parents, especially fathers, and my experience of some CAFCASS officers. I am concerned that the, “stability,” of children has been misinterpreted to mean their physical stability eg living in one house, at the expense of emotional stability ie maintaining contact with both parents at levels similar to those before separation. I do not think that the proposals for the role of CAFCASS are workable because of these deficiencies. CAFCASS resources would be more effective if staff were trained specifically for the mediation between parents and representation of the best interests of children in a new service.

The measures on enforcement are an improvement. However, is it in the best interests of children to have a parent caring for them who has been made subject of a curfew? The curfew could restrict the child’s opportunities for social and educational development. Also it may impede the parent’s ability to access help in an emergency. How does a court deal with a parent who broke a curfew? Similarly I have concerns about the practicality of community service. This would be limited by the time that the parent is caring for the child. How would a court respond to a parent who persistently failed to attend for community service? These concerns could mean that courts remain reluctant to enforce contact orders in a similar way to the current reluctance to fine or imprison parents who obstruct contact orders.

The proposal of compensation for financial loss is interesting. However unless the compensation was taken from benefits or wages I am not clear how this would be workable. This could be seen as punitive to the child. Also it does not address the child’s loss of the holiday. Personally the offer of compensation would anger me as it would demean my motives for taking legal action: to maintain contact in the best interest of the child after mediation and negotiation have failed; not to have compensation. A good enough parent should not require the threat of financial punishment to provide the best emotional care for their children.

The Draft Bill's proposed outcome to reduce the number of protracted and expensive contact disputes between 10 per cent of separated parents could be achieved using current legislation. The Children Act 1989 already provides protection for children at risk of emotional harm. It is well documented that in addition to parental separation the obstruction of contact with a parent causes children emotional harm. However CAFCASS and the Family Courts rarely if ever manage cases of obstructed contact using child protection procedures. It would be in the best interests of children if this were done in order to identify the parent who would facilitate contact with the both parents. In practice parents would know at separation that if they did not facilitate contact with their ex-partner then they would not be able to be the resident parent. If this “deterrent” was not effective then the remaining option would be enforcement by transfer of residence to the parent who would ensure contact with their ex-partner. This would be in the best interests of the children as it would prevent them suffering the emotional harm of obstructed contact.

The Draft Bill suggests a review in three years to assess its impact. I agree that a review is necessary. However if the impact is not satisfactory then three years is too long in the development of a young child to delay further interventions. I would suggest that the review period be reduced to a year.

In summary the Draft Bill is an improvement but its proposals on enforcement remain flawed and do not address the best interests of children. The explicit recognition of emotional harm caused by obstructed contact and the routine use of child protection procedures to address this would deter to these disputes and be in the best interests of children.

I send my best wishes to the Committee in deciding how to proceed in the best interests of children in this difficult matter.

Dr John Furness MB BS DCH FRCPCH

2 March 2005
Memorandum by Mr Joe Healy

(2) In response to following

Section 3 Enforcement orders (3) indent 30

1. Whether the proposed contact provisions, including enforcement, are appropriate and proportionate.
2. Whether the proposed contact provisions, including enforcement are workable.
3. Whether the proposed contact provisions, including enforcement are sufficient.

(3) No not at all, my ex-wife would not be bothered by either curfew or unpaid work. I think it important to understand that it is not just the mother who wants contact discontinued with the father, it is more likely pressure from new partners. More often than not new partners pressurise mothers into eliminating the father from the child’s lives. Many mothers may want a revenge aspect in their own right but in my experience it is more likely to be driven by jealousy of the father and his new life and or pressure from their new partner who cannot deal with the “baggage” of previous relationships.

(4) So what would work, in my opinion I would advocate a different starting point. Residency should be joint as an objective, the child’s best interest principle should be enshrined as absolute, and one of the principles should be to enjoy the company of both parents, current system forces a child to choose, this is the most wicked thing the state currently imposes on a child. We are now in 2005, many fathers are no longer performing the role of “breadwinner”, the vast majority are actually participating in a full emotional and caring engagement with their children.

(5) So what would work in the narrow context of this committee.

1. Residency in itself to be reviewed, if we enshrine that contact with both parents is important and that it is culturally unacceptable to deny access to the absent parent, then we should consider transference or Residency where appropriate. Residency or contact should be treated as equal status, it is unfortunate that society, schools, doctors, judiciary etc regards residency as being custody and also having “control” over the child. To this end Parental Responsibility should have higher status than what is perceived as now.

Transference of Residency where appropriate

2. Imprisonment to me is the last resort but should be a realistic option, the law needs to be consistent here, “contempt of court” is contempt of court. I believe rehabilitation as part of imprisonment may help however have no faith that curfew or unpaid work will work. Is imprisonment proportionate. I believe so, damage to the child, their long term opportunities and society in general is horrendous, it’s time to tackle the causes of poverty, anti-social behaviour and crime not the consequences. Imprisonment could only work by arrangement, the child would need to be cared for by the absent parent, providing adequate welfare arrangements can be organised, am sure this will work. This would only need happen to a few people before the message got out that frustration of contact orders will not be tolerated. Australia does it and it works.

Imprisonment

3. Removal of Driving license, we use this for CSA enforcement, why not in contact, incidentally the CSA itself by discounting the parent with care 1/7th of maintenance for every overnight stay is actually contributing to the frustration by mothers of contact orders, they have a financial incentive to deny overnight stays. CSA should change rules such that contact periods as defined in court orders or voluntary arrangements are deductible whether overnight or not, this would take the argument away. In rural areas this may not be possible, however in most urban areas children could still be taken to school on public transport.

Removal of Driving License

4. Fine to be paid on every breach of contact order, find it incredible that Judges fail to do this because it is taking money from the family, the legal system extracts more money from the family than any amount of fines that could have been imposed, I might add that family legal costs may actually be substantially reduced if serious enforcement is carried out. The fine could indeed be a “compensation” fine to be paid to the contact parent, this keeps the money in the family. Clearly collection may be a problem, however “compensation” fines could be “incentivised” along the lines of doubling in size for non payment ie same as parking fines for instance. There will be some people however who will not pay or cant pay, suggest then that other assets are taken into consideration and even legal charges taken over property.
A flat “compensation” fine of £1,000 should be paid on every breach to the parent denied contact.

(6) Compensation for financial loss (section 4) para (7) and (9).

The Bill fails to understand the lengths people will go to avoid financial compensation of any form to an ex-partner.

(7) Evidence to date from the CSA is alarming 50 per cent success rate in recovery of monies to Parent with Care, in my case my ex-wife regardless of having built up a considerable debt to me via the CSA, declared herself a student and to date hasn’t paid a penny.

(8) A person’s financial circumstance should include equity in the property or vehicles or any other assets they own, attachment to earnings, or adjustment of tax codes etc until that debt is cleared. Deliberate avoidance should be taken into consideration, circumstances prior to the debt being incurred should be considered, where deliberate avoidance is clearly shown it may be necessary to combine or extend enforcement measures ie removal of driving license.

(9) As for paragraph (9) in the bill, we must avoid anyone using the children as a human shield to avoid their responsibilities, again judges are using the welfare of the children issue as a reason not to jail or fine the mother, however we are talking here about compensation to the father, the finances are still within the “family” and therefore the welfare of the child should not be an issue.

(10) To conclude are the current enforcement provisions, including enforcement appropriate and proportionate, having returned from Cork, Republic of Ireland a few weeks ago I was more than surprised to see how well the smoking ban in bars and restaurants is working, the main reason for this is the clearly displayed signs showing massive fines of 3,000 euros for non compliance to the individual. This is a country where enforcement of smoking laws was perceived as being impractical as the “pub” and “smoking” were deemed culturally inseperable!

(11) I’m using this as an example firstly because if we want the required outcome which I believe to be making contact arrangements work and more so changing the culture we do need to have as above what might be perceived as “disproportionate” measures, that will ensure the following.

1. Quick Compliance.
2. Families able to move on and settle their differences.
3. Less Court time, less legal costs to families.
4. Where contact is disrupted a wide range of serious enforcement options that can and need to be enforced quickly.
5. Children no longer being used as pawns, or as a weapon against either parent.
6. Eventually more settled children, less societal problems in later life etc.
7. More Compliance by absent parents with CSA, thereby less poverty for children.

February 2005

Memorandum by Joan Hunt, Senior Research Fellow, Oxford University Centre for Family Law and Policy

INTRODUCTION

1. This response is based on my experience as an academic researching various aspects of the family justice system for the past 20 years. I am currently researching how a number of other jurisdictions handle litigated contact disputes, particularly modes of intervention not used in this country, and what evidence there is that any of these interventions “work”. I am the author of an overview of contact research (Researching Contact (2003); a policy briefing paper (Hunt with Roberts (2004): Child contact with non-resident parents[attached]) and a pre-CAFCASS study on the experiences of children and parents subject to a welfare report (Buchanan, Hunt, Bretherton and Bream (2001): Families in Conflict). I was also a member of the Stakeholder Group on the Facilitation and Enforcement of Contact set up by the then LCD to advise on implementation of the CASC report (and specifically two sub-groups: Enforcement of contact and Family Assistance Orders). The reports of these two sub-groups, which deal directly with the topics covered by this draft bill, are attached as appendices.

2. This response deals only with those parts of the bill which deal with contact.
CONTACT ACTIVITIES

3. These particular provisions are to be welcomed as the government’s long overdue response the CASC report Making Contact Work. They give the courts a greater and more flexible range of responses to difficult contact cases and require government to ensure that services are available. My current research on other jurisdictions suggests that the proposed powers and activities are generally appropriate and are likely to be effective for at least a proportion of families.42

4. Success will depend, however, on having sufficient, appropriate and adequately resourced services. The Australian experience of implementing new enforcement measures before ensuring the services were there and trying to slot highly conflicted parents into existing services should be salutary.

5. It is not clear from the bill when activities may/may not be ordered. They could be used, presumably, for first time applicants. It may be more appropriate, however, if the court can initially “refer” rather than order and perhaps there should be some such restriction. Nor are they specified as an enforcement option although the explanatory notes envisages most applications being dealt with through these activities.

6. The broad definition of “activities” is sensible—overly specific Australian legislation had to be amended to allow greater flexibility.

7. It appears to be envisaged that directions/orders will be made on a case-by-case basis. As such the matters set out in Clause 11E are appropriate. I suggest they should also include a specific reference to the safety of the person concerned and the children.

8. Were the court to require all parents to participate in certain activities, however, the requirements could be unduly cumbersome. Yet it may be more efficient—and acceptable to parents—to give courts powers to require all parents in dispute (subject to protection for violence) to take part in an educational/information programme or a dispute resolution process as a routine early step. These are key elements in the Family Resolution Pilot but under current legislation can only be encouraged, not ordered. Experience from the U.S. and Canada indicates that take-up of voluntary programmes is low, while mandatory programmes equally effective.

9. Being charged to attend will exacerbate inter-parental hostility and resentment of court. It may inhibit courts from ordering both to attend, even though many problems arise from relationship difficulties.

FACILITATING AND MONITORING CONTACT

10. Although the bill adds facilitate compliance to the purely monitoring functions in the Green Paper the remit of the CAFCASS officer should be broader, to ascertain the impact of the order on the child and the need for support. The officer’s overriding responsibility should be the welfare of the child.

11. It is not clear how these provisions relate to Family Assistance Orders, which require consent. Conceivably they would be redundant if CAFCASS’s role extends, as it should, to post-proceedings support for any family which requests help. Realistically, however, without a statutory obligation, this is unlikely. Reform of FAOs should be in this bill. (see Appendix 1)

12. More radically, CAFCASS could be authorised to provide “parenting co-ordinators” with a remit to help, mediate and where necessary, arbitrate relatively minor disputes. Parenting co-ordinators are increasingly used in the US and are generating interest in Australia, Canada and New Zealand. There is at least some evidence that they are successful in reducing relitigation.

42 There are now examples of interventions in several other countries focused on families litigating contact. Some better-established types, notably post-separating education, have been quite extensively researched in the US and Canada, and there is evidence they can be effective for many families. Most recently attention has turned to developing programmes for the most difficult families to help, where conflict is entrenched and non-compliance with court orders may be an issue. Such programmes include educational classes for high conflict cases; therapeutic mediation; enforcement mediation; post-ordering monitoring and support and parenting coordinators (a professional appointed to work with a family for up to two years with a remit to mediate disputes and where this is not possible, to arbitrate on specified issues). There are also programmes, the most extensive being the Australian contact orders programme, which use a range of interventions tailored to the needs of the family, including group work with parents and children; educational classes, counselling, modified mediation, case management; telephone support and supervised contact. Much less research is available on these programmes and on the whole their effectiveness is not yet proven. However the evidence does suggest that even in these most difficult cases a proportion of families can be helped. Programmes are usually welcomed and seen as effective by the judiciary and other family justice practitioners. It is also notable that while parents initially resent being made to attend, by the end most have engaged with the programme, report they have benefited from it and concur that it should be mandatory.
ENFORCEMENT ORDERS

13. The bill should make clear that ordering contact activities are an enforcement option. Consideration should also be given to enforcement mediation, used in Finland and a number of enforcement programmes in the US, where quite high settlement rates are reported.

14. Restrictions are needed on the court’s discretion to use punitive orders before trying alternatives. Current options are so inappropriate that they are remedies of last resort. However the somewhat lesser penalties in the bill may make them more attractive.

15. Curfew orders appeared, unheralded in Next Steps. The bill further criminalises through the provision for “electronic monitoring”. This is appalling. Indeed the curfew provisions may achieve the dubious distinction of being ineffective either as a means of securing compliance or as a deterrent to other parents (because it is scarcely onerous for a resident parent to have to stay where they are likely to be anyway, although it may be inconvenient); exacerbate hostility between the parents and probably the non-resident parent and the child and morally repugnant.

16. In making an enforcement order the court must only “take into account” the welfare of the child. Given the whole justification for a contact order is the interests of the child it is ironic that the court could find itself subordinating the child’s interests to upholding the authority of the court by punishing a parent. The child’s interests should be paramount in enforcement proceedings as well.

17. To ensure that the child’s interests are properly taken into account, there should be a presumption that the child will be separately represented.

18. In addition to satisfying itself that the likely effect of the enforcement order proposed is proportionate to the seriousness of the breach, the court should also satisfy itself that the likely effect on the child is proportionate to the harm the child may suffer as the result of the breach. Research shows that most children want to retain a relationship with their non-resident parent and that positive parenting by a non-resident parent, provided levels of conflict are low, promotes children’s well-being. Efforts to promote contact are to that extent supported. However research does not show that contact, in itself, benefits children. Moreover, where parental conflict is high, particularly where children are caught in the middle, as children involved in court proceedings tend to be, contact can be damaging. A court enforcing a contact order may therefore be in the unfortunate position of taking steps, which may have a immediate negative impact on a child, either directly or through the impact on the resident parent, for the sake of a future good which may be only illusory if parental conflict remains unabated and the child remains in the middle of a war zone.

19. Reasoned debate about enforcement is hampered by the poverty of research evidence on the incidence and reasons for non-compliance, the effectiveness of interventions, including punitive orders and the impact on children of both the enforcement and non-enforcement of orders. It is really making law in the dark.

20. Current knowledge, however, suggests that enforcement proceedings may flow from many different circumstances, including over-reaction to minor infringements; misunderstanding of the terms of poorly drafted consent orders; changing circumstances and genuinely held concerns over safety and parenting involving domestic violence, child abuse, substance misuse and psychiatric illness. An Australian study which investigated enforcement proceedings before the introduction of their current regime reported that “the one-sided unreasonableness of the hostile mother stories was noticeably absent”. 65 per cent of applications involved major concerns about the care provided by the non-resident parent and only a tiny fraction of breaches were considered serious enough to warrant a penalty43.

21. Given the complexity of the issues and the likelihood that in many cases straight enforcement of the existing order would not be appropriate, the Stakeholder Group on the Enforcement of Contact recommended the use of a more neutral term “the management of non-compliance”, rather than enforcement, which prejudices the issue.

22. The Group recommended that the first stage in dealing with any application for breach (apart from those made recently after a contested hearing and welfare report) should be an assessment of whether the order the court is asked to enforce is appropriate, accords with the child’s welfare needs and is safe. Our subsequent recommendations for dealing with proven and unwarranted non-compliance, (see Attachment 2) were premised on this assessment. It should be noted these were the unanimous recommendations of a group consisting of a judge, a family law solicitor, representatives from Women’s Aid, Families Need Fathers and the National Youth Advocacy Services.

PUBLIC SECTOR FINANCIAL COST

23. These predictions may prove valid over time but it is foolhardy not to budget for substantial short-term additional costs. There will be considerable new demands on CAFCASS. Heightened expectations may fuel increased litigation. Cases which are already entrenched will not miraculously disappear to free up budgets to prevent other cases reaching that point. Courts may be more willing to make community service orders than they were to commit to prison.

24. Unless the government is prepared to commit significant resources to the implementation of this bill it will fail.


Extract from Appendix 5

Services to be provided under a revised Family Assistance order

Work which we consider might realistically be undertaken by experienced/well-trained CAFCASS officers involving individual children and their families:

— Direct work with an individual child or sibling group eg on issues such as parentage; reintroduction of an absent parent; “life—story” work etc.

— Practical facilitation of contact—helping with arrangements, providing a venue, assisting the parents to communicate more effectively, negotiating agreements as to how when and where.

— Facilitation of indirect contact, either as a step on the road to direct contact, or where direct contact is impracticable/undesirable—post box arrangements, reading an absent parent’s letter with a child and assisting them to reply, videos, school reports, photographs. Historically, indirect contact has not been approached imaginatively but could become a valuable tool?

Interventions which might usefully be provided by way of “group” programmes to be developed by CAFCASS, potentially in partnership with other organisations.

— At the most straightforward level, parenting classes which provide the opportunity for absent parents to simply learn the practical skills associated with childcare. For example there are cases where the parents have separated before or shortly after the child’s birth and the mother’s objection to unsupervised contact is that the father has never had “hands on” experience of caring for a small baby. Local authority family centres would provide a good model for this sort of work.

— Groups which both parents might attend together or separately designed to assist them in the management of co-parenting after separation; looking at issues such as:
  — parenting “style”;
  — the desirability of consistency of approach within the separated households;
  — how to understand and manage conflict;
  — how to successfully “detach” themselves from their former emotional relationships and issues; and
  — the provision of clear information upon the presumptive value to any child of a meaningful relationship with both parents.

— Where the court has found there to be real issues around an absent parent’s violence or drinking or drug use, CAFCASS should provide (initially by a process of referral?) programmes to assist the absent parent eg access to domestic violence perpetrator groups (the Probation Service has considerable expertise in running such groups and would be an obvious point of referral if they were funded for “non-criminal” programmes) and referral to drug/alcohol treatment programmes. Such programmes could run alongside “keep safe” type programmes for resident parents and the children themselves where such support was appropriate.

— Programmes directed towards assisting the children who are caught up in their parents disputes; including perhaps:
  — the development of strategies to help them to cope;
  — the provision of accurate information as to what is happening and sources of help;
  — assistance in understanding the implications of divorce/separation; and
  — reassurance that it is not “their fault”.


— We observe that these children are likely to be “Children at Risk” and we hope that the forthcoming Green Paper may include consideration of the services to be provided to them.

— Provision for the court to refer a parent for psychological or psychiatric assessment and therapy. In an ideal world a comprehensive range of services, including family therapy, would be available to parents and their children via a publicly funded health service within a reasonable time scale. At present these facilities are available to families with resources but, sadly, not to the vast majority of the population. Accordingly we look to CAFCASS to develop partnerships with appropriate specialist resources—whether agencies or individuals—for the referral of such cases.

Attachment 2

Report of the Stakeholder Group on the Facilitation and Enforcement of Contact

Appendix 7

THE MANAGEMENT OF NON-COMPLIANCE WITH COURT ORDERS FOR CONTACT

Preliminary

1. This subgroup was asked to consider the issue of “enforcement” of court orders for contact. “Enforcement” seemed to suggest a discrete and drastic act. The image which immediately springs to mind is the sending of a recalcitrant mother to prison. In our view, the reality of successful implementation of court orders is that of a continuing process, involving negotiation, non-punitive options, continuous reconsideration and the continuing promotion of the child’s welfare interests. Accordingly, we have concluded that the more neutral terminology “the management of non-compliance” would be more appropriate.

2. We bear in mind that “enforcement” proceedings are not a commonplace or even frequent aspect of contact between a child and a non-resident parent. The proportion of such cases must be seen in the context of the overwhelming majority of proceedings which never reach this unhappy pitch and in the wider context of the overwhelming majority of separating parents who can manage to reach agreement about their children without the necessity of any court involvement at all. Positive early interventions to support post separation parenting should further promote a culture of compromise and agreement whereby fewer cases ever reach the court system.

3. For those which do, we wish to stress that “facilitation” of contact continues to be preferable to its “enforcement”. We sincerely hope that the comprehensive implementation of the recommendations of the CASC report, and the suggestions of this group as to facilitation of contact (including the proposals for interventions under an amended s16 of Children Act) will increase the quantum of safe and beneficial contact between children and their non-resident parents. But we do also anticipate that positive interventions designed to facilitate contact will have the added advantage of significantly reducing the number of cases where non-compliance with a contact order ever becomes an issue.

4. It is important to recognise that high conflict cases which fall into this spectrum of “enforcement” are complex and difficult. Research in Australia has clearly shown that non-compliance is often only one element of the parties’ post separation difficulties and that many “enforcement” cases involved domestic violence, substance abuse, child abuse and serious parenting deficits. Those few cases which reach this point need particularly careful investigation and management. They are unlikely to be resolved by simplistic solutions.

5. We consider that the representation of the wishes and feelings, as well as the best interests of the child, are crucial elements in the process. We therefore recommend that there should be a presumption in favour of separate representation of the child in all cases returning to court because of non-compliance with a contact order. Until s122 of the Adoption and Children Act 2002 is implemented this can be achieved under Rule 9.5. The presumption could of course be displaced where separate representation is unnecessary or undesirable in a particular case, although the court should be required to give reasons for its decision.

6. In proceedings for non-compliance with contact orders, the current situation is that the child’s welfare is not the paramount consideration but is nevertheless a very anxious and critical factor in the courts’ decision. It is worth noting that the UN Convention on the Rights of the Child (Article 3.1) states that “In all actions concerning children, whether undertaken in public by private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

7. Judicial continuity is particularly critical in these cases to maintain a consistency of approach. It also reduces the temptation to make empty threats!

8. Speed of response on the part of the court to any alleged breaches of its orders is also very important. The case needs to come back before the court quickly and thereafter to be tightly managed and timetabled

**The Staged Approach**

9. The CASC report sets out carefully considered conclusions based on extensive consultation. We have taken this as our starting point. We support the propositions set out at p97 onwards for a “staged” process;

**Stage 1**

10. It is fundamental that the order which the court is asked to enforce is appropriate and accords with the child’s welfare needs. Many contact orders are made “by consent” with minimal judicial input and no welfare investigation. It has also been recognised that historically, the courts have sometimes failed to distinguish between the unreasonable “implacably hostile” parent and the parent who has valid and reasonable grounds for declining to cooperate with contact proposals. So it is not surprising that an application for enforcement of a contact order is often met with an application that the order be varied. In reality, a considerable number of contact orders are varied in such circumstances

11. Accordingly, we recommend that the first step in any case where an order for contact is not being complied with is a thorough investigation by the court as to whether the order in its current terms does meet the child’s welfare interests. Such an investigation may include consideration of the following;

   (a) The circumstances in which the order was made.
   (b) The age of the order.
   (c) The reasons for non compliance.
   (d) An assessment of the child’s welfare needs, by CAFCASS with other expert assistance where necessary; addressing issues arising from the welfare checklist. This assessment should include an examination of the likely effect upon the child of the order being enforced.
   (e) In appropriate cases where there are allegations of abuse, a specialist risk assessment.
   (f) In appropriate cases where one parent has been proved to have used violence upon the other parent, an assessment of the impact upon the child.

12. What follows is based on the assumption that the re-visited order of the court for direct or indirect contact follows appropriate investigation and does indeed accord with the child’s welfare interests.

13. The obligations and responsibilities of each parent under every order must be carefully spelt out and the consequences of non-compliance made clear at this and each of the ensuing stages of the process.

**Stage 2**

14. Where an order has not been complied with, voluntary “non-punitive” remedies should normally be the court’s first option. Such remedies would run alongside a requirement upon both parents to co-operate with the contact order. We refer back to the recommendations made in relation to a revised s16. Remedies would include mediationconciliation alongside a variety of supportive work, perpetrator programmes, parent education, training in the management of conflict, psychological or psychiatric assessment and therapy in relation to either parent, child focused work including child advisory services etc.

15. The involvement of CAFCASS will be critical. We have suggested (in the paper on Family Assistance Orders) that CAFCASS should be funded to offer an advisory service to all parents. Where there is an issue of non-compliance, however, we consider that parents should have a named officer whom they can contact when difficulties arise. This officer, of course would need to be in a position to offer direct help as well as refer to other agencies. They could also negotiate with parents appropriate compensatory contact.

16. It is important not to be naive about the level of interventions that many of these families are likely to need. California, for instance, has developed an “impasse mediation” programme for very high conflict families, involving several weeks of intensive therapy and counselling, which seems to have had some good
results. The Australian Family Court ran a small impasse mediation pilot, as the end of which the Court Counselling Services recommended this as the best approach for difficult contact cases, less costly than hearings though more expensive than regular mediation.

17. It is axiomatic that the full range of programmes and resources are readily available and adequately funded (in particular CAFCASS must be properly resourced).

18. The difficulties which will ensue if appropriate resources are not readily and widely available are well illustrated by the Australian experience. The implementation of the new regime of enforcement which seemed to offer such promise (set out as Appendix to the CASC report) was fundamentally undermined by precisely such failures. (Information provided to the group by Vicky Leach of NCH and confirmed by discussions with a distinguished Australian family lawyer).

19. Some services are already well established but are unlikely to be able to meet the extra demands the courts may be making upon them. Others, such as Parent Education Classes, particularly those aimed at highly conflicted separated couples may need to be developed virtually from scratch. It is vital that a substantial co-ordinated and nation-wide framework of services is in place if the fresh approach to the management of non-compliance which we have suggested is to be effective.

20. We consider that it is necessary, therefore, for the LCD working in conjunction with the voluntary sector to:
   (a) establish what programmes and facilities are available at present;
   (b) consider how existing programmes may be developed;
   (c) consider setting up pilot programmes, possibly by “pump-priming” voluntary agencies; and
   (d) ensure that programmes are thoroughly evaluated so that we can begin to build a picture of “what works”.

Stage 3

21. If a parent continued not to comply with the order and did not cooperate with such non-punitive measures on a voluntary basis, there should be power to compel their participation. A failure to co-operate with such an order without reasonable excuse could be visited with punitive sanctions.

22. Legislation will be necessary to widen and define the court’s powers to direct appropriate parental participation. The legislation should set out a broad and flexible “menu” of orders which can be adapted to the circumstances of an individual case eg to be required to hear about and consider the possibility of mediation, perpetrator programmes, parent education, psychiatric/psychological assessment etc.

23. Once this stage has been reached, we recommend that the court should take over responsibility for ensuring compliance, it should not be left to the aggrieved parent. This approach reflects our view that non-compliance with court orders is a matter for the state and takes account of the state’s obligations under the ECHR. Thus we also consider it incumbent upon the court to actively follow up what is actually happening in relation to the child concerned. We envisage proactive monitoring, including for example, the presence of a suitably trained person employed by CAFCASS to facilitate “handovers” and where necessary provide evidence to the court, telephone calls by a CAFCASS officer to both parents following a visit to check out whether it went well. Both these measures are employed in other jurisdictions. CAFCASS should have the power to bring the case back to the court.

Stage 4

24. Ultimately, the court must retain power to compel compliance with its orders or at least to punish non-compliance. The approach of the courts to these few cases sends out potent messages to the wider community including other separating parents. Some punitive sanctions are unavoidable in cases of continued non-compliance, notwithstanding our concerns about the potential impact upon some children. It is possible to anticipate cases where punitive sanctions are not a “last resort” to be considered only where all other avenues have failed. But, as is the current position, punitive sanctions should only be used in extreme circumstances where there have been flagrant and intentional breaches of the court’s orders and normally where other options have been tried and have failed.

25. The existing sanctions namely imprisonment, and fines, are either so drastic that they are likely only to be used in extremis or not feasible because of the family’s low income. (Although some judges have found that sending a parent to the cells for even a few hours can be effective) The range of sanctions should be extended to include:
—— Compensation;
—— Community punishment (with specifically designed programmes developed in liaison with the Probation Service);
—— Community rehabilitation (including a condition of attendance at an appropriate programme);
—— Deferring sentence for a period to see whether compliance is achieved; and
—— Possibly, the confiscation of a parent's driving license, a sanction available in some jurisdictions in the USA.

26. Sanctions should not run in one direction only. So, for example, where a parent has sought and obtained a contact order and then behaves abusively during a contact visit, s/he may also be the subject of penalties.

27. There will be very rare occasions where an order for contact is not being complied with, and the appropriate order is a transfer of residence to the other parent or an order providing for shared residence. Similarly, where there are real child protection issues linked with the refusal of contact, the making of a s37 direction and an interim care order can sometimes be appropriate. Whether such a course can properly be adopted in the circumstances of an individual case must be a matter for judicial discretion, subject to an assessment of the welfare of the child by reference to the welfare checklist at s1 (3) of the Children Act. Such a course should only be considered where it accords with the welfare interests of the child concerned. We would deprecate in clear terms the use of such mechanisms as a strategy to ensure compliance with a contact order.

CONCLUSION

28. We wish to stress that reform of this area of the law is long overdue and is now urgent. On 22 May 2003 the Court of Appeal expressed concern as to the absence of any action by the LCD in relation to the CASC recommendations.

29. Evaluation of the effectiveness of the regime we propose will be critical. Eg: in what proportion of cases does “enforcement” result in contact, is it maintained over time, what is the quality of contact and what are the short and long term effects on children. We would anticipate the LCD reviewing the operation of the new regime at defined intervals.

March 2005

Memorandum by Jewish Unity for Multiple Parenting

INTRODUCTION

First, we would like to thank those seeking input on this draft Bill for the opportunity to provide written comments.

JUMP (Jewish Unity for Multiple Parenting) is a support and lobby group within the Jewish Community campaigning to secure better relationships following separation and divorce for children, their parents and extended family as well as providing support to those encountering similar problems. We find many parents struggling to maintain a positive relationship with their children after divorce, particularly non-resident parents. Often, they are fathers, but the problems affect a growing number of mothers as well as grandparents and extended family members.

We are lobbying with other national parent groups for a legal presumption of parenting time for both parents at the outset of a contested child residency case so that it explicitly acknowledges the vital and equal role of both parents continuing in their children’s lives after separation/divorce. We realise the significant impact that the legal profession and the Courts often have as to how the painful divorce process impacts on the children and their relationships with both parents and their respective families. We also recognise that safe contact for children is paramount and needs to be ensured from the start. In addition, a legal presumption of parenting time is a distinct issue from the time each parent practically spends with their children which will be influenced by a number of factors. However, to ensure each parent is able to maintain a loving, nurturing and continuing relationship with their children they should be able to spend a minimum of 30 per cent of their time with their children following separation/divorce.

JUMP has provided written evidence to the DfES on their July 2004 Green Paper on Parental Separation: Children’s Need and Parents’ Responsibilities and forwarded these also to the Constitutional Affairs Committee who have conducted an inquiry into the family justice system and the operation of family Courts. We feel this evidence is also relevant to raise in relation to this draft Bill (see Appendix 1). Through our ongoing initiative with the Chief Rabbi’s Office, JUMP also requested that the Chief Rabbi submit written
evidence to the Constitutional Affairs Committee in January 2005 (see Appendix 2). In this evidence the Chief Rabbi stated that “. . . it is the firm view of the Office of the Chief Rabbi and the Chief Rabbi himself that both parents of the child, have a right to be involved in the child’s upbringing (unless proven otherwise) and can make a contribution to their religious, educational, emotional, social and material welfare.”

In addition, JUMP has provided comments to the Law Society in February 2005 on their 2nd Draft Family Law Protocol.

**General Comments**

We welcome proposals for new and more flexible judicial powers to ensure Contact Orders are adhered to, however we do not feel these new proposals are extensive or powerful enough, and remain to be convinced that they will achieve their aims of maintaining contact for children with their non-resident parent.

We also welcome new mechanisms to deal with contact disputes such as in-Court conciliation, improved Court case management and alternative dispute resolution projects. However our concern again is that we are not convinced the following issues have been addressed to ensure enforcement, viability and practical implementation of these measures. The issues that we are particularly concerned about are as follows:

**Funding**

The draft Bill suggests that there is sufficient funding currently available to address the draft Bill proposals because the Green Paper claims the number of contact disputes will significantly diminish as a result of these new proposed measures. A recalcitrant parent is not going to adhere to a Contact Order unless it is clear to them from the outset that both parents have an equal legal presumption of parenting rights.

As raised by a representative from the Law Society at the Constitutional Affairs Committee oral evidence session on 7 December 2004, the first one-day hearing date available in the High Court was found to be in July 2005, namely there was a delay of over six months. This is therefore a reflection of the limited number of High Court judges available to hear cases in relation to the increasing number of contact disputes coming to the High Court. As the High Court is the arena to which most difficult and protracted cases are referred, unless this situation is rapidly addressed through significant additional funding of judicial positions and support mechanisms, the proposed improvement of Court case management will just not be achievable.

Changes to the recent C1 and C1A Court application forms early this year demand increased information required to bring a case to Court, and additionally request information relating to domestic violence, violence or harm. We believe that there will be a disproportionate increase in the number of cases involving alleged domestic violence. This will take significantly more Court time in evaluating whether a genuine case of domestic violence exists and will significantly impact on, and delay, the continuing evaluation and implementation of contact arrangements for children with their non-resident parent, which assuming contact is safe, will seriously and negatively impact on their ongoing relationship.

In addition, if the full gamut of domestic violence allegations is to be taken seriously, consideration must also be taken of cases where implacable hostility is cited whereby the resident parent damagingly influences the children against the non-resident parent that can result in the breakdown of their relationship.

No mention is made of what action a Court might take should the allegations be proven to be unfounded.

**Timely Implementation of the draft Bill proposals**

There is a genuine concern that with the impending General Election there will be a significant delay in implementing these proposals. There is overwhelming evidence provided to date from a broad spectrum of interested parties that the current family law system in this country is not working. Reform and effective change to protect the children’s best interests in maintaining a relationship with both of their parents following relationship breakdown must therefore be implemented as a matter of urgency and not influenced by any political agenda.

**Integrated Court-related process**

In all the recent consultation documents there has not once been a proposal about the overall integrated Court-related process and how each group (ie; judiciary, social services, mediation services, children and family experts etc) will input into this process. If changes to the current family law system in this country are to be effective, every Agency and individual involved in the process needs to understand from the outset how
the process should work. At present it is a very “hit and miss” process and no one person or Agency is held accountable for any significant delays in having a case heard in Court. This is clearly unacceptable, and needs to be addressed.

Experiences of how systems work well in other jurisdictions should be taken into consideration, seriously reviewed, particularly where a critically evaluated level of success has been achieved, and then included in any recommendation for change in this country. The following process has an established success rating and should be seriously considered here:

**Proposed Court Integrated Process**

Step 1—On issue of proceedings about children, a Court hearing is booked six weeks in advance. A Parenting Co-ordinator is appointed.

Step 2—Mandatory “parenting education” class is attended by both parents.

Step 3—Mandatory “Alternative Dispute Resolution” session is undertaken to guide parents to an agreed “Parenting Plan”.

Step 4—Court Hearing where the agree “Parenting Plan” is scrutinised and endorsed, or if no agreement, the Court Orders its own “Parenting Plan”.

Step 5—Follow up care. The Parenting Co-ordinator remains available to help address any ongoing problems with attempts to resolve these outside of Court.

**Detailed Comments**

It is not possible or practical to comment on each specific point. However the following statements have been raised specifically as they cause particular concerns.

**PART 1—CONTACT WITH CHILDREN**

11C Sections 11A (Contact activity direction ) and 11B (Contact activity condition): further provision

(7) Information about the likely effect of the direction (or the condition) may, in particular, include information as to:

   (a) any conflict with the person’s religious beliefs;

It is important to recognise and respect differing religious beliefs either between religions or within a religion, and ensure that the beliefs embraced within the family while it was intact are upheld. However, the use of religion or alleged religious differences between the parents to thwart contact with the children should be addressed and minimised as much as possible.

11G **Enforcement Orders**

(3) If the court is satisfied that a party to the proceedings has without reasonable excuse failed to comply with the contact order, it may make an order (an “enforcement order”) imposing on the person—

   (a) an unpaid work requirement, or

   (b) a curfew requirement.

(4) [If the court makes an enforcement order imposing a curfew requirement on a party to the proceedings, it may include in the order provision imposing a compliance monitoring requirement on him.]

Whilst new sanctions available to the Court are to be welcomed, the imposition of a curfew on the parent failing to comply with a contact order is highly unlikely to achieve this aim. The issues of enforcing it and policing adherence to it are completely impractical and are not a strong enough deterrent. In addition, such policing will incur additional financial and resource costs that have not been considered.

In addition, the gender wording relating to “him” in this point and many other points throughout the draft Bill need to be addressed to ensure gender neutrality.

In this regard, JUMP infers the generic term “children” to mean one or more child, and the term “he/him/his” is a gender-neutral description that includes “she/her/hers”. The use of the word “their” instead of “he/him/his” may address this problem.
4 Compensation for Financial Loss

(4) If the court is satisfied that the ground is established, it may order the person in breach to pay the applicant compensation in respect of his financial loss.

This sanction only has a very limited chance of success in the very small number of cases where finances are not an issue to either parent. Again, even if this sanction were imposed on the recalcitrant parent breaching a Court Order, how is it to be enforced, particularly where the sanctioned parent states that they do not have the means to pay?

Part 3—Miscellaneous and Final

Public Sector Financial Cost

45. For illustrative purposes, we assume that measures on contact orders will reduce enforcement applications by a maximum of up to 80 per cent, reducing the annual caseload for enforcement applications from around 7,000 per year to around 1,400.

This assumption is made without any credible supporting data such as a Regulatory Impact Assessment, bearing in mind the number of contact orders has steadily increased over the last five years. The proposals made in this draft Bill are simply not radical enough to achieve this. In addition, the points made previously about the perceived increase in Contact Order disputes fuelled by domestic violence allegations will certainly not reduce the number of applications and subsequent caseload for enforcement applications.

Effects of the Bill on Public Service Manpower

54. We do not anticipate that the provisions in the Bill will have a significant effect on public service manpower.

58. It is estimated that the maximum reduction in overall caseload would be around 60 per cent, which would represent a maximum overall saving of up to £76.8 million per year.

Based on previous comments made in the General Comments section we are not compelled to believe these arguments and, if anything, more funding has to be made available to address the significant shortfall of judges available to meet required Court hearing needs so that cases come to Court within a maximum of six weeks and not six months which is the current trend in the High Court.

Commencement Dates

60. The commencement clause provides for the clauses to be commenced by order of the Secretary of State, after consultation with the National Assembly for Wales.

There is no indication how quickly this will happen and there are real concerns that the forthcoming General Election will railroad a rapid implementation of proposed poorly conceived improvements to the family law system which is desperately needed; alternatively the Bill will be consigned to the back-burner until the next Session of Parliament.

Facilitation of Contact and Enforcement of Contact Orders: Background

4. The legal and court process can be slow and adversarial which can contribute to a deterioration of the situation between separating couples. It can also result in the voices of the children involved being overlooked.

5. Court decisions based on past circumstances may not always provide workable long-term solutions. The resolution of family issues is not a one-off event; it is an on-going process that parents need to work at over the long term. As circumstances change, orders may need to be varied. Other cases that return to court may be due to non-compliance with the court order. At present, a number of cases keep returning to court and the courts may find it hard to resolve them.

These are the precise reasons why a rapid and fundamental overhaul of the family law system needs to be implemented in the UK. Changes have to be made based on input and recommendations from other judicial systems that have been successful in addressing these challenging problems. “Tinkering at the edges”, which this current draft Bill attempts to do, simply will not put in place an effective family law system geared to meet the demands and challenges faced by parents and more importantly by children in the 21st century.
Costs and Benefits

24. The package of measures proposed in the Green Paper should ensure that fewer cases brought to court are repeat applications as other interventions will be more readily available.

Based on previous comments made in the General Comments section and also in Appendix 1, we are not compelled to believe these arguments.

CAFCASS

38. CAFCASS will take on the role of:
   — advising courts on what provision is available in the local area, before a court directs a person;
   — to undertake a contact activity, or makes an order on condition that they do so, or makes an enforcement order;
   — monitor, and report to the court on, compliance with a contact activity;
   — monitor, facilitate and report to the court on, compliance with a contact order; and
   — monitor, and report to the court on, compliance with an enforcement order.

39. This role has been discussed with CAFCASS, and it is anticipated that no additional resources would be needed, as most CAFCASS officers would be aware of information relating to programmes in an area through the course of their normal work, and would not require additional research to advise the court.

Recent evidence presented to the Constitutional Affairs Committee has clearly demonstrated that CAFCASS is completely ill-equipped to deal with these proposed reforms. There are no consistent quality standards applied to CAFCASS officers as to how they work within the family law arena, and until these are put in place as a fundamental first step, then these other proposed roles and responsibilities for this government organisation simply cannot be met.

Enforcement and Sanctions

58. At present, courts can enforce contact orders under the law of contempt, through fines and the power to commit to prison those who have disregarded orders (or equivalent statutory powers in the Magistrates’ Court). However, the provisions in the draft Bill provide a more flexible range of facilitative and enforcement methods. These will give courts the power to refer parents to a variety of new measures to facilitate the making of contact arrangements and to improve compliance with contact orders.

As previously stated, these new sanctions are a minimal change to those already in place and are simply not far-reaching enough to ensure compliance of Contact Orders. Mandatory parent education needs to be established as the norm from the outset and parents need to be informed what the Court expects of them from the start in agreeing parenting time arrangements. Parents also need to be informed that breaching agreed Contact Orders will not be tolerated. These firm measures should reduce the number of times cases return to Court on the issue of non-compliance with Court Contact Orders.

The Government has previously stated that the 10 per cent of most difficult cases reach the Court arena; therefore strict measures must be adopted from the outset to achieve a significant improvement in the family law system and potentially achieve the cost savings so desired. In addition, the question has to be asked as to whether the best welfare of the child or cost-savings to Government is uppermost?

Monitoring and Review

59. Once proposals have been in place for three years, we intend to monitor the use of the new powers and compare the number of applications made currently to those under the new powers. One way we would measure success is by a reduction in the number of court orders and repeat applications.

The proposed review method and assessment of success endpoints is not frequent or detailed enough bearing in mind the importance of ensuring an improving family law system in this country as quickly as possible. The system should be made open and transparent and a clear framework established that is communicated to everyone involved in the process.

Annual interim evaluations should be made and significant shortfalls addressed on an ongoing basis with proposed recommendations made to address these. In addition, a final full 3-year review should be undertaken. For such a review to be effective, the statistics need to be presented timeously. This infers that statistics need to be collected and analysed on an on-going basis to reduce the delays between the end of a
reporting period and publishing statistics where the delay is currently typically a year. This is not acceptable, and a time limit of six months should be mandated.

Clear assessment criteria should be defined which should include:

- Number of new applications under the new powers vs previous powers
- Number of cases returning to Court on a repeat application as a result of breached Court Contact Orders under the new powers vs previous powers
- Number of cases where domestic violence is cited using the new C1 and C1A forms vs the previous C1 form
- Number of cases where domestic violence is proven using the new C1 and C1A forms vs the previous C1 form
- Number of cases where contact has been withheld resulting from allegations of domestic violence later shown to be false using the new C1 and C1A forms vs the previous C1 form
- The time taken to reach a decision about domestic violence allegations, resolution of contact arrangements, and the time one parent has been prevented from seeing their children as a result
- The true incidence of contact related domestic violence problems based on Court applications
- The time taken for cases to reach Court following submission of an application (NB: There should be a maximum defined waiting period for an initial Court hearing of six weeks as the standard to be achieved)
- Assessment of judicial continuity in cases and the impact of this on outcome and the need to return to Court
- The types of residency arrangements and contact arrangements agreed and their level of success in minimising repeat applications

3 March 2005

Memorandum by The Law Reform Committee of the Bar Council

The Law Reform Committee of the Bar Council ("the committee") is pleased to have the opportunity to comment on this draft Bill. The Committee's response will follow the numbering of the themes on which the Joint Committee expects to concentrate.

1. Whether the Proposed Contact Provisions, Including Enforcement, are Appropriate and Proportionate

There are cases for which the proposed contact provisions, including as to enforcement, will be appropriate. They also appear to be proportionate.

2. Whether the Proposed Contact Provisions, Including Enforcement, are Workable

2.1. As regards the contact activity direction, workability is likely to depend on a number of factors. The first of these is the availability of suitable resources local to those made subject to such orders. Such facilities will also need to be available at times which fit in with the work and other commitments (including as to childcare) of those required to participate.

2.2. There is no provision for meeting the cost of childcare whilst a parent with care is required to participate in a contact activity or to carry out unpaid work. This means that there will be cases where such orders, although they might otherwise be wholly appropriate, could not properly be made.

2.3. The provisions potentially place a very considerable burden on the Children and Family Court Advisory and Support Service ("Cafcass"), both in terms of providing information and monitoring compliance. This service is already so overstretched that, even in urgent public law cases, there is often many weeks delay before an officer is appointed. The intended use of Cafcass officers much more extensively for conciliation work will also add to the burden of work. The Committee has considerable reservations as to whether the anticipated maximum reduction of 60 per cent in the overall caseload will be achieved. It is noted that there is no intention to invest further resources into Cafcass. If the provisions are to be workable and effective, orders need to be implemented without delay and any breach quickly referred back to court. It is difficult to see that this will be achievable.
2.4. As stated above, the Committee considers it unlikely that the reduction in overall caseload which will result from the implementation of the Green Paper programme as a whole will be anything like 60 per cent and, accordingly considers it may be optimistic to anticipate that a saving of £76.8 million could be achieved.

3. **Whether the Proposed Contact Provisions, Including Enforcement, Are Sufficient**

3.1. The provisions would be improved by including scope for the provision of childcare (or funding for childcare) to a parent with care who is required to comply with a contact activity order or an enforcement order requiring unpaid work to be done.

3.2. The threat of a transfer of residence to the absent parent is capable of being a very effective sanction for the parent with care who is obstructive of contact. There are, however, many cases where the sanction is not effective because the “absent” parent is not equipped to take on care of the child or children. One provision which might usefully be added is the option to make available parenting classes to the “absent” parent with a view to the court considering whether a transfer of residence would be in the children’s best interests.

4. **Whether the Proposed Adoption Provisions Are Necessary, Workable and Proportionate**

4.1. It seems to the Committee that these provisions are necessary. Provided the regulations contemplated by Clause 7 provide a sufficiently broad discretion to permit the bringing of a child into the UK where the circumstances make it appropriate to do so, the provisions are likely to be proportionate.

4.2. In order to make the provisions proportionate, it may be necessary to have some system of funding for prospective adopters on whom the onus is to satisfy the Secretary of State that it is appropriate to make an exception.

4.3. Provided the regulations are appropriately drafted and adequate systems are in place, the provisions should be workable.

5. **Whether the Draft Bill’s Proposed Outcomes Could Be Achieved Through Better Means**

5.1. Probably not but please see 3 above for suggested additional provisions.

*February 2005*

**Memorandum by Mrs Christine Maxwell**

1. **Introduction**

I am a primary school teacher and witness the effect on children who are caught up in the conflict between their parents. I have also experienced the loss of my father when my own parents divorced and my mother opposed contact (access then). I have witnessed the enormous difficulties my husband has experienced in trying to maintain contact with his children from his previous marriage, and I am a mother of two children, now teenagers, both of whom have a close and loving relationship with their father and who have maintained contact with him without the assistance of the courts. I feel that as a consequence of my own experiences and my witnessing of the distress caused to others, I have some insight to contribute and therefore submit my views on the draft Bill.

2. **Continuing Relationships**

Before addressing the detail of the proposals I ask the committee whether or not due consideration has been given to the effect on the child’s relationship with the non resident parent should any of the proposed enforcement actions be taken? The resident parent, usually the mother, has unfettered opportunities to alienate a child from the other parent, particularly an older child, whose views on contact will then be taken into account. It is this alienation which makes the most intractable cases so difficult for the courts to resolve. What hope has a parent, thus alienated, got of re-establishing a relationship with an estranged child if that child regards him as responsible for his/her mother’s community service order, curfew, fine or imprisonment?
3. **Public Awareness**

Since there is no proposal for equality of status for both parents in this Bill, the Government should commit itself to a public awareness campaign designed to make the refusal to allow contact, the treatment of children as possessions and as weapons of revenge, as abuse and wholly unacceptable, in just the same way as the message about domestic violence and racial abuse have been through direct advertising and indirectly through television dramas and soap operas.

4. **Schools**

I note that it is proposed that schools will be required to discuss matters relating to divorce and separation through the PSHE programme. I do not feel that this goes far enough. Teachers are rarely well informed about this area of the law and or the issues involved in difficult cases. A father of a child at my own school has a court order for indirect contact. He does not believe that the letters and cards sent to his children’s home are given to them so he writes to them care of the school. The teachers, fearful of a rebuke from the mother, hand these letters to her even though they too do not believe that she gives them to the children. The father does not know the order is being broken. The school would not act in this way if there was clearer guidance. Very few non resident parents receive newsletters and information regarding parents’ evenings etc on a regular or timely basis. They are therefore denied the opportunity to fully participate in their child’s schooling. Although a circular exists to advise schools regarding this, few teachers are aware of it and often regard parents who cite this and request information as being difficult. This must be addressed.

5. **Are Proposed Contact Provisions, Including Enforcement, Appropriate and Proportionate?**

The proposals related to “contact activities” seem to be helpful. A message is given to the resident parent that their behaviour is wrong without putting at greater risk the relationship between the child and the non resident parent. Such activities may well result in a change of heart and prevent the need for more serious action. Proposals for community service orders and curfews, whilst providing wider and less extreme options for the courts, do present difficulties for future relationships for the reasons previously stated. The proposal that it would be CAFCASS who would make the enforcement application is helpful as is the proposal for their involvement in follow up action and support.

6. **Are the Proposals Workable?**

My husband attended a directions hearing on 11 February. The Judge ordered that the parties prepare statements within two weeks and that the case be fast tracked and heard by the Circuit Judge, who had reserved the case, at the earliest possible date. The date he has been given is the 9 May, three months later. I cite this as many people reading the proposals for case management would not regard this time lapse as particularly fast. I ask the committee to consider, therefore, if the Family Courts are equipped to act as the Draft Bill intends? A great deal of damage can be done to a child’s relationship with a non resident parent in three months.

7. **Are the Proposals Sufficient?**

As stated, I believe the proposals are insufficient without adequate public and schools information in place. Additionally, I believe the courts should also apply sanctions to persons who are found to have made false allegations in order to prevent contact between parent and child.

8. **Are There Better Means?**

In addition to enforcement proposals already considered, the committee could consider making a charge on the property of the resident parent or a fine which would not come into effect until the children are grown, thereby not having a detrimental effect upon them. Such a charge or fine could be removed if the resident parent complies with the orders of the court.

The committee could also consider whether a parent who refuses to comply with a court order, when that order has been made in the child’s best interest, is in fact guilty of emotional abuse and denial of the child’s human rights (the right to family life and relationship with both parents). There need be no further punishment that might adversely affect the child but the abusing parent, if found guilty, would have a criminal record—this might act as a further deterrent.

26 February 2005
Memorandum by the Mayor of London

INTRODUCTION

The Mayor welcomes the introduction of the Draft Children (Contact) and Adoption Bill as an opportunity to help ensure the proper protection of children following the Domestic Violence, Crime and Victims Act 2004 and the Children Act 2004.

The response below relates to questions 1, 2 and 3 of the Joint Committee’s terms of reference.

SUMMARY

1. The Mayor agrees that the best interests of children are served where they are able to have contact with both parents, provided that it safe for them to do so.

2. However, the Mayor is concerned that principles established in this draft legislation will not work in practice unless there is sufficient investment and training for those working in the field. In particular more investment and training is needed to proactively identify and deal with domestic violence otherwise it remains hidden and therefore cannot be taken into account when making decisions on contact orders.

3. The Mayor has three specific concerns in relation to the draft legislation:
   — Capacity of CAFCASS;
   — Repeat screening;
   — Finding of fact and burden of proof.

CAPACITY OF CAFCASS

4. The Mayor welcomes the current thematic review of domestic violence being undertaken by the MCSI. This initiative provides a much needed opportunity to gather and analyse data to identify weaknesses and to inform future planning of the CAFCASS service.

5. The Government acknowledges that “30 per cent of applications to the [family] courts have safety allegations associated with them. These include allegations of domestic violence between parents” (Green Paper on Parental Separation, para 46). But less than 1 per cent of contested contact cases result in a prohibitive steps order (see table below). This gives cause for concern about the numbers of children still at risk. This suggests that domestic violence is being ignored or overlooked in a significant number of cases.

Contact orders granted/refused over the last four years:

<table>
<thead>
<tr>
<th>Year</th>
<th>Granted</th>
<th>Refused</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>41,862</td>
<td>1,752</td>
</tr>
<tr>
<td>2000</td>
<td>46,070</td>
<td>1,276</td>
</tr>
<tr>
<td>2001</td>
<td>55,030</td>
<td>713</td>
</tr>
<tr>
<td>2002</td>
<td>61,356</td>
<td>518</td>
</tr>
</tbody>
</table>

Source: Judicial Statistics for England and Wales

6. The Mayor believes that the introduction of robust monitoring systems are needed to ensure all domestic violence cases are correctly identified.

REPEAT SCREENING

7. Domestic violence is defined by the London Domestic Violence Strategy as “a pattern of behaviour which is characterised by the exercise of control and the misuse of power”. Many women will have been so controlled and monitored by their partners that it will have been impossible for them to collect evidence to back up their case. This has serious implications for contact orders.

8. If a woman discloses that she has suffered from violence and a finding of fact exercise is undertaken, the only proof that may be available is the child’s account of events. Children need time to disclose information on what they may have witnessed and if they are rushed there is a danger of cases falling through the net.

9. The Mayor welcomes the introduction of screening but current guidance does not make explicit that screening should occur on multiple occasions to encourage disclosure. Minimum standards to ensure that each adult and child involved is screened at least twice should be introduced.
10. The Mayor believes that screening for domestic violence needs to be mandatory at every stage in the process to ensure that the safety of the woman and her children remains central to the system and each adult and child should be screened at least twice.

**Finding of Fact and Burden of Proof**

11. The Mayor believes that screening for domestic violence needs to be mandatory at every stage in the process to ensure that the safety of the woman and her children remains central to the system and as a minimum, each adult and child should be screened at least twice.

12. The Mayor believes that if a woman makes an allegation of domestic violence that this should be believed unless evidence against the accusation can be put forward.

13. The Mayor is concerned that the proposed system still focuses too much on those women who maliciously make false allegations of domestic violence. The needs of vulnerable women, and their children, who are genuine survivors of domestic violence should be absolutely paramount. In cases of rape and sexual assault the burden of proof is placed clearly on the perpetrator.

14. The Mayor believes the burden of proof in cases of domestic violence should be the same as in cases of sexual assault.

*March 2005*

**Memorandum by National Family Mediation**

NFM is a network of 57 services nationwide. The organisation started 25 years ago when concerned professionals identified the damaging impact adversarial and protracted divorce proceedings had upon children. Our central ethos is to promote an ongoing relationship for children following divorce and separation. Our particular area of expertise is working with highly conflicted children’s cases in contact and residence disputes.

This response should be read in conjunction with the UK College response and Family Rights Group response. NFM wholly supports the issues raised by both organisations.

1. **Whether the Proposed Contact Provisions, Including Enforcement are Appropriate and Proportionate**

Most working within the field of divorce and separation would acknowledge the need to reform some aspects of the Children Act 1989. The recommendations made by the select committee to include an additional element to the welfare checklist would help avoid the establishment of a status quo position by default and place an emphasis on considering an on-going relationship for children caught in the process of their parents’ separation. In addition the recommendations of the select committee to implement Sec 13 of the FLA 1996 that would require all parties to attend an information meeting with a mediator prior to issuing proceedings would immediately enable parties to have access to a range of information that might help them avoid the court process if appropriate.

The Government in the green paper outlines a number of proposals aimed at reducing the use of courts in contact and residence disputes and identifies the apparent lack of information and advice available. There is a lack of clarity about who the Government is aiming its support programmes at. The overall objective is to divert families from the courts and reduce the number of repeat applications and intractable disputes. There needs to be clarity about information and advice available before court, and a range of services that can be used during the court process that also link with the services outside the court process. As mediators we are in the unique position of being involved pre-court, during court and post court and have a substantial body of knowledge in this area.

Separating and divorcing couples need ready access to information and advice, including practical information about the process and costs, and information about advice and support agencies. The draft proposals for the parenting plans currently in circulation might help people to start thinking about issues they need to consider, however, in many cases they are unlikely to be successfully completed by two people who have recently separated and are emotionally de-stabilised. The plans are very detailed and it would be exceptional for parents to either need or be able to use this document in this level of detail at one time. Separating and divorcing people do not behave rationally towards each other, they react emotionally.
With regard to the proposed contact provisions, the development of services to facilitate agreement will clearly be beneficial. If the education and information is available in a range of formats to accommodate need, perhaps people will avoid court. Once in court, however, the aim is to divert from adversarial proceedings and lengthy CAFCASS reports. This is aimed at reducing delay but research has shown that in-court conciliation produces pressured agreements that often do not last.

With regard to child consultation as part of the court process, we believe that attending court is a very daunting prospect for a child. In most cases, it is easier and more sensitive to the needs of children for their views to be heard out of court and in a confidential setting, as happens in mediation.

In relation to enforcement of course court orders should be obeyed and the development of a range of punishments for disregarding court orders rather than just a fine or imprisonment would be seen as more proportionate. When a criminal offence is committed, however, one is aware that one will be punished and is answerable to the court. In family court one party is likely to believe the other party is responsible for the events that happen to them, causing further hostilities and widening the divide between parents for their children. Sanctions must be used with caution and as with criminal punishment the level of punishment, if necessary should be incremental.

2. WHETHER THE PROPOSED CONTACT PROVISIONS INCLUDING ENFORCEMENT, ARE WORKABLE

None of the enforcement proposals will be workable unless contact provisions are in place simultaneously. This will be difficult to achieve, though some resources are already well established. National Family Mediation services are available countrywide; they have many links with associated organisations; and they actively signpost clients to appropriate agencies. However, parenting programmes, domestic violence perpetrators programmes etc are not yet in place. CAFCASS do not have the resources or partnerships to immediately shift from being assessment orientated report writers to become case managers. Additionally this shift is likely to be slow even if the enforcement legislation is implemented because of the cultural aspects of the family justice system and its long established adversarial approach.

With regard to curfew and tagging, who is it for? They could be effectively used for monitoring those convicted of domestic violence offences or proved findings of fact hearings or used in conjunction with perpetrator programmes. Their usefulness and application is likely to be limited.

Community punishment for breach of orders, whilst preferable to imprisonment, will not address the reasons why an individual is opposed to or obstructive in contact and residence disputes. They might further entrench the dispute because one person believes the other has caused this to happen. The imposition of these types of orders also increases links between CAFCASS and the probation service, a connection that has only recently been severed with the introduction of CAFCASS. The probation service is the body that assesses suitability for attendance on community punishment orders. There is also the issue of people gaining a criminal record because they are divorcing and emotionally unsettled.

Financial compensation for lost holidays and breached contact arrangements sounds reasonable and fair in theory, but in practice presents major challenges. In mediation we frequently meet people whose holiday contact arrangements have failed. Through discussion, it is clear that the arrangements were often inadequately discussed and open to misinterpretation and miscommunication on both sides and as a consequence doomed to failure. There is hurt and blame on both sides notwithstanding the financial losses that may have been incurred. If this legislation is to be implemented, the court will need to detail precise actions within timescales to prevent any potential misunderstanding. It will also need to declare that there may be compensation awarded in the event of breach, so that there is no room for doubt about the expectations and requirements of both parties.

The proposals are that parenting groups will be available and courts can direct parents to attend. It is very important that the purpose and message of these groups is clearly understood. They will be resented by many parents if they believe that in being referred, their basic parenting skills are being questioned. The purpose of the groups should be to provide information about the needs of children during and after parental separation; the effect of parental conflict on children; how to minimise damage; and to raise awareness of the changing role of parenting post separation. Attendance at parenting groups could be effective provided they are properly resourced and consistently available, delivered through partnership arrangements. Anecdotal information received about the current family resolution pilot indicates that the groups at present are difficult to manage because of the high level of anger expressed by individuals, which suggests that the purpose of attendance is not clearly understood. NFM could have a significant role to play in delivering parenting groups, as raising awareness about the changing role of parenting post separation is a core function of mediation.
3. **Whether the Draft Bill’s Proposed Outcomes Could be Achieved Through Better Means**

As stated at the outset there needs to be greater clarity about the services and information that is available to separating parents before an application is made to the court.

Once in the court arena NFM believes that the proposed outcomes could best be achieved through pro-active judicial case management as proposed in the president’s private law programme, linked with immediate post order support services provided by CAFCASS, with that agency having partnership arrangements to provide additional support services. In addition CAFCASS will need easy access to the courts in order to return matters to the judge without delay.

The provision of support services and partnerships with allied and related organisations will in the long run be far more effective than any punitive measures the court might have at its disposal. It is therefore imperative that the supportive elements of this legislation are in place and adequately resourced at the same time as implementing enforcement legislation. There is a risk that the family justice system will become punitive and not facilitative in responding to families in crisis if the elements are not treated with equal importance.

Any legislation needs to reflect an understanding of the fact that emotional distress and trauma caused by separation and divorce is transitory. People need support and a facilitative approach to problem solving, not punishment. This will, however, require a huge culture change in the system if it is to be successfully achieved.

---

**Memorandum by the National Family and Parenting Institute (NFPI), Parenting Education and Support Forum and Parentline Plus**

1. **Background**

NFPI is the leading voluntary agency providing advice to government, the parenting sector and to parents on parenting and family support. The Parenting Forum is the umbrella body for practitioners working within the statutory and voluntary sector, leading the development of National Occupational Standards for all practitioners working with parents. Parentline Plus is the leading voluntary organisation providing direct services to parents, via a 24 hour helpline, information services and a range of local face to face services.

2. **The Issues**

Research suggests that divorce and separation can be detrimental to outcomes for children, especially where high levels of conflict between the parents are involved.73 Parents calling the Parentline Plus helpline are all too aware of this—and we have consistently high levels of calls concerning the impact on adults and on children. Children, too, use helpline services for support.74 Research also suggests that outcomes for children are likely to be worse where a new stepfamily is formed, and similarly, calls to Parentline Plus suggest that the complexity of issues in stepfamilies is a cause of serious tension and difficulty.

We therefore endorse the Government’s efforts to attempt to improve the current situation, and broadly agree with the Government’s analysis of the difficulties.

We particularly welcome the approach to legislation that builds on the Children Act 1989, which maintains as paramount children’s best interests in court decisions, sees parents as equal before the law, provides the courts with new powers to facilitate contact, to require reluctant families to seek professional help and deal with enforcement difficulties, and builds on CAFCASS’s work through empowering them to fulfil a more active monitoring role.

We do however have some serious practical and resource concerns that we highlight below. We would be pleased to give evidence to the committee to amplify these concerns.

3. **Our Concerns**

3.1 Whilst we believe that referrals of parents to classes to help parents better understand the negative impact of divorce and conflict on their children and themselves might be hugely beneficial for some, we have some serious concerns about both the availability of such programmes, and their suitability for all, as well as concerns about the overall message to parents.

---


3.2 There is no reason to assume that the parenting skills of parents who are divorcing or separating are inferior to anyone else’s or that they need classes to learn them. What they need are specialist programmes, which address the particular situation in which they find themselves, to raise their awareness of the issues for their children and help them deal with them.

3.3 Such programmes are not routinely available in local areas. They need to be resourced, the practitioners need top-up training in the specific needs of this particular group of parents in addition to the normal training they have had in how to provide parenting groups. Resources need to be available to train practitioners and to enable the groups to be offered at convenient times and locations. There are considerable administrative implications for organising this provision: liaison with the courts and making sure that parents are not offered groups attended by their ex-partner are time consuming.

3.4 Though it is easier in terms of planning services to have a one-model approach, families and family members facing difficulties need a range of possibilities. Some families would benefit from dispute resolution models, some from family group conferencing model. Many would benefit from outreach on a one to one basis enabling a provider to build trust with the parent, which in turn points to better take up of the service. There needs therefore to be a menu of possible service responses developed for users not the service providers.

3.5 Availability

We are keenly aware of the following obstacles to successful implementation of the proposals:

3.5.1 Lack of provision in most parts of the county

— Lack of any uniformity or consistency of any provision. Providers would need to be trained to a level at least to enable them to meet the National Occupational Standards for Working with Parents. In addition, skills in mediation, working with domestic violence and child abuse, and high level group facilitation skills would be required to ensure that parents received a high quality service.

— Whilst the current pilot designed and delivered by The Parenting Education and Support Forum and RELATE will test some of the issues of appropriateness and types of provision, any plans for roll out will have to take into account the current lack of capacity nationally to provide these programmes.

— We are also all too aware of the practical and operational difficulties of group provision—finding enough people to join a group who can make the time and location is not straightforward. There are issues of child care, travel, and timing to consider. The pilots have shown that these difficulties are compounded by the need to interact with the courts, parents’ busy lives, issues around accusations of domestic violence sometimes resulting in numbers being too low for realistic group work. The practitioners running groups for the pilots found that they needed to set aside some time at the beginning and end of each session to deal with individual concerns. There is also a need for some parents to be offered provision in languages other than English. Parentline Plus offers telephone based groups, using conference calls to overcome some of these practical constraints, and evidence suggests that people can gain as much from telephone based work as from face to face work. However, this requires additional training for those facilitating groups, and a different approach to resources and materials for the groups.

— We are unaware of any resources being set aside to support capacity to deliver such programmes being developed. Indeed, Parentline Plus’ experience strongly suggests that obtaining funding for development is well nigh impossible, and obtaining funding for delivery locally is time consuming, difficult and rarely at full cost recovery.

— We are concerned that costs of fully developing an effective service will be underestimated. The costs per parent of providing parenting classes outlined in the Regulatory Impact Assessment to the Draft Children (Contact) and Adoption Bill are based on an ideal rather than a realistic model (where all parents do not attend and the cost per parent/user therefore rises) and do not include outreach, transport, crèche, and venue costs.
3.5.2 Appropriateness

In terms of appropriateness, our collective experience as well as other research suggest that:

- Some parents are in such emotional turmoil that they will be unwilling and/or unable to participate in a group setting—and indeed the inclusion of people with very high levels of individual distress and need can derail a group or make for a group experience that is less than satisfactory for other group members. We strongly urge that parents are also offered individual work and support.

- For some parents, the issues causing them difficulty are less about their children, or their insight into the impact on their children and more about their own emotional histories and difficulties. Counselling and therapy would be more helpful in overcoming these difficulties where they are already well aware of the impact on their children—it could benefit the children more in the long term.

- We are concerned that the overall message could come across to parents as "you don't understand your children properly and that makes you bad parents". We believe that a much more helpful message is “divorce and separation cause turmoil and upheaval for all concerned. There are services to help you negotiate your way through the minefield and so to minimise the damage to all the family”.

- We are also concerned about the lack of provision for children and young people. A series of research studies has pointed to the need of accessible support for children and young people when parents are in conflict.

4. IN CONCLUSION

For the new legislation to work, there needs to be a message that makes it acceptable to seek help, there need to be a range of individual and group services available, all of which are delivered by practitioners who are trained to the National Occupational Standard.

Memorandum by The National Youth Advocacy Service (NYAS)

The National Youth Advocacy Service (NYAS) has reviewed the draft Children (Contact) and Adoption Bill and welcomes the commitment within it to a more flexible approach to the enforcement of contact and to the recognition that the legal and court process can be slow and adversarial and can result in the voices of the children involved being overlooked.

NYAS is unique, in being the only children’s charity which is also a Community Legal Services Help Point, with its own family law practice. Since its formal establishment in 1998, NYAS has developed and delivered a range of socio legal services of information, consultation, social work support, casework and legal advice and representation to children and young people resident in the UK, aged between 0 and 25 years. The majority of NYAS’ legal work is concerned with the representation of children involved in private law proceedings and, in particular, long-running disputes about residence and contact arrangements. NYAS also runs the Merseyside regional Supervised Contact Centre funded by the DFES.

This submission is therefore, informed by NYAS' accumulated specialist experience and by the results of a research snapshot of 52 Cases involving 95 children in which NYAS represented children in family proceedings pursuant to Rule 9.5 of the Family Proceedings Rules 1991 (Ref Family Law. January 2005. Vol 35. pp 49–52.)

The complexity of the cases within the research sample is illustrated by the number of years that children had been involved in court proceedings. Only two per cent of the children had been involved for less than one year, whilst 44 per cent had been involved for between one and three years, 36 per cent between four and six years and 16 per cent between seven and 10 years. Almost all (98 per cent) of NYAS’ cases involved an intractable dispute over contact and the caseworkers were instrumental in achieving resumed contact in 13 per cent of cases in which contact had previously completely broken down.

It is impossible to quantify the harm done to the children involved in such acrimonious cases. It is from the perspective of these children that we make the following comments on the draft Bill.

1. We are concerned that the prime focus of the draft Bill is about asserting the rights of adults, rather than about protecting the interests of their children. This impression is compounded by the content of Clauses 11C (6) and 11H (2), which place a responsibility on the court to consider the implications and likely effect of the enforcement order on the adult concerned, but not the implications of the proposed action on the child. We are particularly concerned about the inclusion of the use of electronic monitoring devices as a possible sanction, as
this could be potentially frightening in the child’s eyes, criminalising the parent. In addition a child’s attitude
to contact could be seriously affected if s/he knew that his mother was having to undergo a community
punishment whilst s/he was seeing his father.

2. NYAS is concerned that the Bill does not differentiate between those parents who are genuinely
intransigent in resisting contact and those who are refusing because of genuine fears about their child’s safety.
This means that the issues of domestic violence are not adequately addressed by the draft Bill. It is our
experience that many mothers allege abuse that has never been properly investigated. It is also our experience
that a prolonged and measured proactive approach to building trust between intransigent parents is often
effective in building relationships.

3. It is not clear that the whole of s1 Children Act 1989 applies, including the welfare checklist (s1.3). Nor is
it clear how the voices of the children are to be heard within the proceedings. Although it is envisaged that the
court will take into account the welfare of the child concerned when considering making an enforcement order
(Clause 3), there is no provision in the draft Bill or guidance in the explanatory notes about how this is to
happen.

4. It is our view that the safety of the child cannot be assured in the absence of both adequate risk assessment
procedures and the availability of separate representation for the child within the proceedings. Both are
essential to ensure that any child protection risk is fully investigated and assessed, combined with independent
evidence to the court to ensure that the child’s views and interests are properly represented and the results of
the assessment made known to the court. Only then would the court be in a position to discharge its
responsibility to give paramount consideration to the welfare of the child concerned.

27 per cent of the children in NYAS’s research (who were all referred by the courts because of intractable
contact disputes between their parents) were found to be involved in serious allegations of physical or sexual
abuse, including domestic violence. In 44 per cent of NYAS’s cases there were questions about the mental
health, physical health or learning disabilities impacting upon the ability of a parent to care adequately for
their child. These are not problems which are capable of resolution through the deterrent of sanctions.

5. We are puzzled by the lack of procedural links with other relevant pieces of legislation. For example, it
would appear that an important legislative opportunity to strengthen the statutory provisions of s16 Children
Act 1989 Family Assistance Orders to support families in conflict has been missed. The Green Paper “Parental
Separation—Children’s Needs and Parents’ Responsibilities” refers at paragraph 81 to the possibility of using
such orders to provide more formalised and wider follow up support to children where contact and residence
orders have been made, by removing the current limitations of six months duration and exceptional
circumstances.

Nor is there any reference to the court’s responsibility to consider the possibility of the child having suffered
impairment “from seeing or hearing the mistreatment of another”, which would appear to be particularly
relevant given the likely prevalence of domestic violence within this category of case. (s120 Adoption and

In addition, and most significantly, there is no reference to the imminent implementation (in September 2005)
and appropriate use of s122 of the Adoption and Children Act 2002, which adds s8 Contact proceedings to
the list of those specified in s41 Children Act 1989 in which children may have the benefit of both a children’s
guardian and a solicitor to ascertain their wishes and feelings and represent their interests before the court.
Our experience is that the amplification of the child’s voice becomes the active dynamic needed to bring about
a resolution of a previously intractable series of adversarial proceedings and its value as an effective and cost
effective facilitator in resolving parental disputes should not be underestimated.
Moreover, we cannot stress too strongly, the dangers for the child of enforcing contact in the absence of both
clear risk assessment procedures and the availability of equal party status and separate representation for the
child who is the subject of the proceedings.

6. We seriously question the assertions in paragraphs 62, 63 and 64 that the Bill as currently drafted does not
conflict with Human Rights Convention rights. This appears only to have been considered from the point of
view of the adult parties and deepens our concern that primarily, this is a Bill about placating adults rather
than being an integrated part of a framework of support services for children and their separated parents.
If the child is not a party to these proceedings then there is arguably a clear breach of the child’s rights under
Articles 6 (rights to equal representation in proceedings) and 8 (rights to family life) of the European
Convention on Human Rights to representation in proceedings affecting them as well as a breach of their
rights under Article 12 of the UN Convention on The Rights of the Child. The procedural measures necessary
for compliance are set out in Chapter 2 of the European Convention on the Exercise of Children’s Rights and
they are sadly absent from this Bill.
In relation to the child’s Article 8 rights, recent European case law has established the principle that “In judicial decisions where the rights under Article 8 of parents and those of a child are at stake, the child’s rights must be the paramount consideration. If any balancing of interests is necessary, the interests of the child must prevail” ECHR. Yousef v the Netherlands [2003] 1 FLR 210 at paragraph 73.

The Bill is confusing in that Clause 1.(Contact activities) 11a (8) states that the welfare of the child is to be the paramount consideration of the court while Clause 3 (Enforcement Orders) 11G (9) states that “in making an enforcement order, a court must take into account the welfare of the child concerned”

In conclusion we believe, with the Government, that both parents should continue to have a meaningful relationship with their child after separation, as long as it is safe. We believe that the child’s welfare should be the paramount concern in decisions taken in relation to contact. It is not clear how the Bill with its emphasis on enforcement as a single punitive action fits within the wider agenda of the services of information, consultation, conciliation and negotiation that we would like to see established to support children and parents who are separating, not just at the time of the court proceedings, but as a framework of preventive and proactive services to reduce family conflict.

March 2005

Memorandum by Kevin O’Reilly, Solicitor

1. Section 8 applications often require consideration of risks and mental health

2. I am concerned with:
   — Directions, when considering an opposed contact order (S11A).
   — Conditions, when making a contact order (S11B).
   — Enforcement orders (11G).
   — The possible need to widen the power to make the regulations referred to in Section 10.
   — The need to ensure that any person, who removes children from the care of a person who has parental responsibility, applies to the Court to determine residence and contact. This would require a new clause.

Mental Health

3. My specific concern, in relation to directions and conditions, is that these are limited to attending an information session or taking part in a programme, class, counselling, or guidance session, or other activity which may be used to assist contact with a child (11E). This should be extended to include referral “to a psychiatrist or psychologist (publicly funded in the first instance)” as recommended by (now) Lord Justice Wall in Making Contact Work.

4. In the Joint Committee session of 24 February 2005, Dame Elizabeth Butler-Sloss gave evidence:
   — that the Court “cannot order adults to have medical psychiatric assessment”,
   — that she “would like to have the power to push them to therapy to a greater degree, particularly to some medical assessment”.
   — “but the adult services are inadequate for the problem. And who is going to pay?”

In fact there is a greater scarcity of child psychiatrists than adult psychiatrists, as is shown by the evidence of the Royal College of Psychiatrists on the draft Mental Health Bill:

“Clinical provision is hampered by such a significant resource shortfall that many Mental Health Act assessments of minors are undertaken by psychiatrists specialising in adult services.”

5. Suspected problems should be considered immediately on separation, because of the risks to the children. Problems with mood and cognition, may only have been observed by the non-resident parent. They can lead to uncontrollable anger, often directed at the children, and unjustified punishment. The Court will discount any account given by the other parent. Public manifestations of such problems are rare. In private there may be abusive behaviour, including violence, implacable hostility, and parental alienation. Such behaviour may be related to hormones in the period after birth, but stress effects the immune system, hormones, and brain chemicals.
6. Half of serious lifetime depression is undiagnosed. It is often accompanied by shame, or a lack of awareness, on the part of the sufferer; she will tell her GP she is fine. Both parents should be involved in the assessment, to ensure a proper history, and if there is any doubt both parents should be assessed. Statements given to the Court should be sent to the psychologist or psychiatrist. Once the children are in the sole care of the depressed parent the effects cannot be mitigated, and the children’s self esteem will be undermined.

7. William R Beardslee MD describes the risk from depression as follows:

> "Undiagnosed depression contributes to poor family communication, misunderstandings, discord, and conflict in the family, and can profoundly disrupt your parenting. Sometimes depression will spark hostility and excessive criticism. Sometimes you will become preoccupied and forget your children’s need for affection. Divorce or depression will also make you unavailable at a crucial developmental point, just when your children feel they need you the most.

But there are ways—and this is firmly grounded in research—to be supportive of your children, to re-establish your focus on parenting, communicate well with one another, and decrease discord, despite depression. The first step is to understand both depression and the needs of your children. This understanding helps you make your interactions positive, which helps enhance your children’s resiliency."

When a Parent is Depressed. How to protect your children from the effects of depression in the family, page 89.

8. Currently the Courts will ask for a report from a Child Psychiatrist when the child has been sufficiently damaged. Nothing can be done when mental problems are suspected, because the Court cannot investigate the risk. A father should probably wait until serious, possibly irretrievable, damage has been done to his child, as raising the matter too early risks being regarded as simply hostile.

9. The NSPCC (DCA 13) and Women’s Aid (DCA 16) have called for better risk assessments where abuse is alleged. False allegations can arise from defects in understanding or delusions, where there is doubt as to whether such allegations are true both parties should be referred for assessment. A judge is not qualified to decide such matters without expert assistance, and assessments (such as the MMPPi) include elements that reduce the possibility of dissimulation.

10. There are no ethical problems with compulsory medical assessment. The General Assembly of the World Psychiatric Association statement of 25 August 1986 says that the psychiatrist need only:

> “advise the person being assessed about the purpose of the intervention, the use of the findings, and the possible repercussions of the assessment.”

11. The position on compulsory treatment is more difficult. The draft MH Bill is likely to permit treatment when:

> “because of the mental disorder the patient’s ability to make decisions about the provision of such medical treatment is significantly impaired,”

(DMH 19) British Psychological Society.

Normally this would not be necessary because a refusal of treatment, once mental state has been evaluated, can be reflected in the order made. But the balance could favour treatment, and the power should be available, at the very least as a treatment requirement in 11G.

Procedural Problems

12. Procedural steps that are applied so as to prejudice the case of applicants for section 8 orders (overwhelmingly fathers), must be addressed; these include:

(a) Ordering the father to serve his statement first. This is common, Mr Justice Munby set out the position in evidence to the Constitutional Affairs Committee on 9 November 2004.

> “If you simply, as we tend to do, say, “Father to file evidence in 28 days. Mother to respond 28 days thereafter. Father to respond, if so advised, 14 days thereafter”
This enables the mother to decide what to say on the basis of the case disclosed. Outside the family court system statements are simultaneously exchanged, so that disputed facts can be resolved on an equal basis, without doctoring evidence.

(b) Inequality of arms

— The provisions of the Funding Code: Guidance, requiring mediation to be considered first (20.11.4), and a “significant improvement” in a child’s welfare to be a possible outcome before public funds are granted (20.22.5), are simply ignored.

— Before the Court, and in at-court mediation, the father will be denied a McKenzie friend (despite Re H) whereas the mother will be represented.

— The Bench Book guidance will predispose the Judge to regard the father as oppressive (Family Proceedings BB 4.3) and concentrate on preventing what he will interpret as intimidation or humiliation (Equal treatment BB).

(c) The Judge will:

— Have before him a Report from CAFCASS, often inaccurate and including prejudicial material. It will give a view that is not based on expert evaluation, there being no benchmarks and inadequate training.

— Apply a precedent from a bygone era, when making the “usual order”, limiting contact to a level well below that sought by the father.

— Avoid any reasoned judgment as to why such a limitation is in the interest’s of the children.

— Regard the status quo as the position before the hearing, rather than when the children resided with both parents.

(d) All of these steps:

— Will be taken in secret, thus avoiding any kind of monitoring that could protect against bias.

— Without the children being represented.

— Without true expert evidence being considered.

13. Even if the bias is addressed by administrative means, the children’s welfare will be damaged by delay. Employment Tribunal procedures permit better case management. It begins with an immediate examination of cases submitted. Often the Chairman requires more information or proposes orders, subject to the views of the parties within a given period of time. Default Judgments can avoid delay. Telephone conferences, or the Chairman writing to the parties requesting answers to questions, can resolve issues quickly. If the vires do not permit rules that are equivalent to the Employment Tribunal Rules of Procedure, this committee should have that problem brought to its attention.

SNATCHING

14. Where either parent removes the children from the joint residence of their parents, that parent should be required to take steps to resolve the arrangements for residence and contact. Such a change is disturbing for the children. The party who remains in the children’s former residence can be left without knowing whether the children are alive. The likely reward for a long period of avoiding detection, and an application, is a residence order with limited contact with the other parent. This would require a new clause but is a specific measure to facilitate contact.

COST

15. The Bill fails to take into account the savings that would result from resolving contact issues. If the early intervention suggestions made above were implemented net savings could be expected.

10 March 2005
1. **One Parent Families**

1.1 One Parent Families is the leading organisation representing lone parents and their children, and campaigns to build a fairer society for all families, in which lone parents and their children are not disadvantaged and do not suffer from poverty, isolation, or social exclusion. We offer independent help and advice to lone parents and receive over 20,000 calls to our helpline a year.

2. **Summary**

2.1 We welcome the opportunity to comment on the proposed contact provisions. Ensuring regular and high quality contact between the non-resident parent and their child/ren is of great concern to lone parents.

2.2 First of all, we would like to emphasise that the majority of parents who are separating agree contact arrangements between themselves. Only about 10 per cent of separating couples enter the courts (Blackwell and Dawe 2003). Those that do enter the courts therefore tend to be the most difficult and protracted cases often dealing with a whole range of other issues such as housing and financial support (see Trinder et al 2005 and Smart et al 2003). The proposals in the draft bill are aimed at this particular group and the measures therefore need to take into account the high level of conflict and distress in those circumstances.

2.3 Secondly, the interest and welfare of the child/ren needs to remain the guiding notion for any actions by the court. Experiencing an acrimonious separation together with their parents arguing over access to the child/ren is likely to be a very upsetting experience for any child/ren. Therefore, any intervention by the court needs to have as its central aim to improve the well-being of the child/ren as long as that does not compromise the safety of anybody involved.

2.4 Thirdly, a review of existing international research have has challenged the notion that contact is good *per se* for children and instead highlights that the nature and quality of the contact are important (Pryor and Rodgers 2001 in Hunt and Roberts 2004). The main ingredient for making contact work is a co-operative relationship between the separated parents (Hunt and Roberts 2004, see also Trinder et al 2005). Thus, while it might be that one parent is in breach of a contact order, the aim of measures will have to be to move the two parents closer to a co-operative relationship in order to ensure that contact arrangements are good for the child and that parents are able to cope with any changes/upheavals themselves as opposed to having to go to the courts again. This might not mean that the parents will have to meet or even be in direct contact as this might not always be appropriate.

2.5 Fourthly, it is important that all contact arrangements are safe for the child/ren and the parents. Fear of violence is probably the most common reason for wishing to change or stop contact with the other parent. Trinder *et al* (2005) found in their study that where mothers refused contact it was either because of concerns about the safety of the child or lack of commitment from the non-resident parent and sometimes both. Violence towards the partner and the child/ren does not necessarily end when a relationship breaks up. Therefore, it is important that a safety assessment is carried out at the beginning of all court procedures as suggested in the Green Paper and where contact is deemed to be beneficial to the child/ren in such situations both the actual provision and the meeting points need to be safe for all parties concerned.

2.6 Finally, supervision and follow-up is vital in these cases for both the parents and the children involved. As outlined before, the cases dealt with by the court are the most acrimonious and ones where communication between the parents might have broken down altogether. Furthermore, in many cases there will be concerns over the safety of the child/ren or one of the parents. Therefore, a CAFCASS family welfare officer should be freed up in order to accompany families through the process, be able to be a stable point of contact and the best place to advise on effective intervention for a particular family.

2.7 Therefore, we would like to make the following comments and suggestions:

- That the welfare of the child needs to remain the paramount consideration;
- That ordering contact activities should also be considered after a breach of contact order instead of enforcement measures;
- That parents might have to be sent on a sequence of the contact activities;
- That in many cases both parents should be ordered to attend contact activities though usually that separately;
- That parents and children would benefit from ongoing support, eg from a CAFCASS family welfare officer;
— That the safety of all participants during around contact needs to be ensured;
— That the whole range of possible contact arrangements should be considered, eg various forms of indirect contact such as emailing or speaking on the phone;
— That contact arrangements needs to suit the whole family which might entail compromises on all parts as for example the children could have different views and preferences with regards to contact arrangements from each other;
— That parents might have additional disagreements and therefore a need for information, advice and settlements beyond the contact dispute;
— That all or at least most of the disagreements will need to be addressed in order to improve the situation in the longer term; and
— That the suggested enforcement measures are disproportionate, likely to have negative effects on other members of the households concerned and unlikely to be effective.

RESPONSE TO THE QUESTIONSPOSED BY THE COMMITTEE

1. Whether the proposed contact provisions, including enforcement, are appropriate and proportionate

1.1 We welcome the idea of ordering contact activities when parents are entering court with contact disputes in general.

1.2 We would like to make four comments with regards to contact activities.

1.3 Firstly, we think that the proposed contact activity measures are proportionate and appropriate. However, when the courts should impose them, to whom, what form they will take and how they are going to be monitored needs further thought.

1.4 Secondly, as mentioned above, the court is dealing with the exceptional cases, ie the most protracted displaying high levels of conflict and distress (see Trinder et al 2005 and Smart et al 2003). Thus, it is not likely that all of these cases will be solved quickly and courts should be prepared to send parents on a sequence of contact activities before making a contact order. For example, to send parents to information classes first and if difficulties persist to parenting programmes or counselling sessions.

1.5 Thirdly, given that contact disputes arise from complex and emotional situations, it is unlikely that one parent is the sole cause for the dispute. Trinder et al (2005) found that mothers who had refused contact reported fears of violence and lack of commitment from the other partner as the main reasons for doing so. Thus, it is crucial in our view to include both parents in the contact activities such as information sessions and, if necessary, order both to attend separated counselling sessions. As stated previously, it will depend on the individual case and the contact activity provision whether it would be beneficial for the parents to attend any such activity together or separately.

1.6 However, this research also demonstrates the needs for safe contact arrangements, ie the expansion of staffed contact centres be it as dedicated contact centres or attached to other venues such as children Centre’s and greater use of indirect contact measures.

1.7 Reviews of existing evidence have shown that whether contact is indeed beneficial to the child/ren depends on the nature and quality of the contact and that a co-operative relationship between the parents is essential for these (see Pryor and Rodgers in Hunt and Roberts 2004 and Hunt 2003).

1.8 Fourthly, the nature and delivery of the contact activities needs further thought. For example, while parenting classes in general receive positive feedback from parents (see among others Ghate and Ramella 2002 and Grimshaw and McGuire 1998), they are unlikely to be appropriate for this client group as they are designed to help parents to deal with difficult children which is not the issue in contact disputes.

1.9 While we welcome the introduction of contact activities, we are not of the view that the proposed enforcement methods are appropriate or proportionate. We agree with the National Family Parenting Institute (2004) that they are unlikely to be effective. The additional enforcement measures suggested in the bill, namely house arrest and community work, are likely to have negative effects on the main carer and other members of the household. Instead, where a contact order has been breached, the family welfare officer who has accompanied the case should make recommendations with regards to appropriate contact activities.

2. Whether the proposed contact provisions, including enforcement, are workable

2.1 Whether the contact activities are going to be workable will depend on their eventual design and implementation. In general, given that these measures are targeted at such a small group, it is unlikely that there will be enough demand for provision in different places of the country. Therefore, delivery by telephone, organisations other than CAFCASS and/or residential weekends should be considered.
2.2 Generally, the contact activities need to be affordable, which means either free at the point of delivery or means tested. In addition, research into parenting programmes has shown other factors such as financial support for childcare also needs to be in place (Grimshaw and McGuire 1998).

2.3 In our view a key element to making the contact activities work is the ongoing presence of a CAFCASS family welfare officer or another trained professional. The draft bill proposes that a CAFCASS officer may be assigned to a family to accompany the individual family members through the court proceedings, to be a constant point of contact and to be monitoring the suitability and effectiveness of contact activities and contact orders. It might not be appropriate for the individual members of the family to meet outside the courts, thus the CAFCASS family welfare officer would be the central contact, liaison and information point for all parties. We recommend that this is done in all cases given their particular complex and acrimonious nature.

2.4 Not only do we think that the proposed enforcement orders are not proportionate or appropriate but we would also suggest that they are not workable. For example, it is difficult to think of a community activity that is likely to address the issue of contact dispute while house arrest might have all sorts of repercussions for other family members, such as missing out on activities with friends.

3. Whether the proposed contact provisions, including enforcement, are sufficient

3.1 In addition to a dedicated CAFCASS family welfare officers, the proposals would also benefit from more emphasis and measures to incorporate the views and needs of children in the process. A survey of children of divorcing couples found that as many as one in four reported that no one had talked to them about the separation (Trinder et al 2001). Thus, there is need to provide information to children in the appropriate way about the legal process and their rights within it but also to strongly encourage parents to talk to children and to take into account the effect their dispute is having on their welfare, eg through family counselling sessions.

3.2 Moreover, as Trinder et al 2005 and Smart et al 2003 have pointed out, family disputes are rarely solely focussing on contact and parents often fail to understand why the other issues which they see as relevant to the contact issue are not being addressed. Thus, we would recommend providing both the Legal Services Helpline as well as other organisations specialising in helping families with a wide range of issues with the necessary training and resources to help parents address the range of issues in question. These will need to be properly resourced.

3.3 Finally, a greater emphasis on mediation would help to defuse the level of conflict between the parents and highlight the importance of listening to the needs and views of the child/ren.

4. Whether the draft Bill’s proposed outcomes could be achieved through better means

4.1 See response to question 3.

5. References


Trinder, L, Beek, M and Conolly, J (2001) Making contact: How parents and children negotiate and experience contact after divorce, York, JRF.

March 2005
Memorandum by Karen Parson

Further to my response to the Green Paper—Parental Separation: Children’s Needs and Parents’ Responsibilities I make the following comments on this Bill.

1. Contact Activities

11A Contact activity direction

(6) Could it not be the case, in some circumstances, that in the absence of a parent (by death or possible imprisonment), that a Grandparent or Aunt or Uncle may wish to keep up contact with a child in that parent’s absence, and therefore should provision not be made for this?

11B Contact activity condition

(7) As 6 above.

I realise this Bill is for the use of Legal representatives but where it has clearly been stated that a “person” can only be a parent would it not be clearer just to say “parent” throughout, instead of person, as person implies it could be someone other than a parent (although as commented, I believe provision should be made for this).

This also applies where reference is given to a “person who is a child”—could this not just state a “child”.

3. Enforcement Order

11G Enforcement Orders

(3b) I am not sure about imposing a curfew—I would prefer to see an increase in unpaid work or attendance at a day centre for classes on Law Abidance/Social Behaviour and Children’s Needs. Perhaps ending with writing an essay on the subject, failure of which would result in them being required to attend the next day, until it has been done.

However, I think it would be important for Courts to address the reasons why such an order was breached. There could be concerns about the effect the contact has on a child, or even that the child did not wish to take part.

4. Compensation for Financial Loss

I am fully in agreement with compensation for financial loss. Also that the cost of an Enforcement order should be met by the offender, where possible.

Summary

The proposals in this Bill should meet the needs of enforcing orders made by the Courts thereby easing the suffering of those parents who have been denied their rights.

Primarily, it is how the “children’s needs” are assessed so as to inform the Courts, that is going to be the most crucial aspect of any order.

Rather than prison, perhaps the Government could consider having a specialist unit/prison for domestic violence offenders and those detained for anti-social behaviour. A form of school for maladjusted adults. Specific programmes related to these offences could then be scheduled throughout the stay.

Unfortunately, the one thing no Court or anyone else can have any control over, is the influence of a parent on a child!

23 February 2005
Memorandum by Planetary Alliance for Fathers in Exile (PAFE)

Introduction

There are over 100,000 British fathers in Europe who have fled GB for they saw no future with CSA and no enforced visitation. They work in many jobs all over Europe, and many improve their own home to sell for profit, using “black” labour fathers to help them making a living without tax obligation. Their kids grow up fatherless. The fathers have often been accused of violence because allegations of family violence are the weapon-of-choice in divorce strategies. Lawyers, and paralegals in women’s shelters, call them “The Silver Bullet”. False abuse allegations work effectively in removing men from their families. The impact that the removal of fathers has on our children is horrific. Here are some of the consequences of the removal of fathers from the lives of their children. The Impact on our Children Inter-spousal violence perpetrated by men is only a small aspect of family violence. False abuse allegations are only a small tile in the mosaic of vilifying the men in our society. They serve well in successful attempts to remove fathers from the lives of our children.

The statistics:

- 79.6 per cent of custodial mothers receive a support award.
- 29.9 per cent of custodial fathers receive a support award.
- 46.9 per cent of non-custodial mothers totally default on support.
- 26.9 per cent of non-custodial fathers totally default on support.
- 20.0 per cent of non-custodial mothers pay support at some level.
- 61.0 per cent of non-custodial fathers pay support at some level.
- 66.2 per cent of single custodial mothers work less than full time.
- 10.2 per cent of single custodial fathers work less than full time.
- 7.0 per cent of single custodial mothers work more than 44 hours weekly.
- 24.5 per cent of single custodial fathers work more than 44 hours weekly.
- 46.2 per cent of single custodial mothers receive public assistance.
- 40 per cent of mothers reported that they had interfered with the father’s visitation to punish their ex-spouse. [“Frequency of Visitation” by Sanford Braver, American Journal of Orthopsychiatry].
- 50 per cent of mothers see no value in the fathers continued contact with his children. [“Surviving the Breakup” by Joan Berlin Kelly].
- 90.2 per cent of fathers with joint custody pay the support due.
- 79.1 per cent of fathers with visitation privileges pay the support due.
- 44.5 per cent of fathers with no visitation pay the support due.
- 37.9 per cent of fathers are denied any visitation.
- 63 per cent of youth suicides are from fatherless homes. [US DHHS Bureau of the Census]
- 90 per cent of all homeless and runaway children are from fatherless homes.
- 85 per cent of all children that exhibit behavioural disorders come from fatherless homes. [Center for Disease Control]
- 80 per cent of rapists motivated with displaced anger come from fatherless homes. [Criminal Justice and Behavior, Vol 14 p 403–26]
- 71 per cent of all high school dropouts come from fatherless homes. [National Principals Association Report on the State of High Schools]
- 70 per cent of juveniles in state operated institutions come from fatherless homes. [US Dept of Justice, Special Report, Sept 1988]
- 85 per cent of all youths sitting in prisons grew up in a fatherless home. [Fulton County Georgia Jail Populations and Texas Dept of Corrections, 1992]
— 11,268,000 total custodial mothers.
— 2,907,000 total custodial fathers [Current Populations Reports, US Bureau of the Census, Series P-20, No 458, 1991] What does this mean? Children from fatherless homes are:
— 4.6 times more likely to commit suicide;
— 6.6 times to become teenaged mothers (if they are girls, of course);
— 24.3 times more likely to run away;
— 15.3 times more likely to have behavioural disorders;
— 6.3 times more likely to be in state-operated institutions;
— 10.8 times more likely to commit rape;
— 6.6 times more likely to drop out of school;
— 15.3 times more likely to end up in prison while a teenager. (The calculation of the relative risks shown in the preceding list is based on 27 per cent of children being in the care of single mothers.)
And—compared to children who are in the care of two biological, married parents—children who are in the care of single mothers are:
— 33 times more likely to be seriously abused (so that they will require medical attention); and
— 73 times more likely to be killed. [“Marriage: The Safest Place for Women and Children”, by Patrick F Fagan and Kirk A Johnson, PhD Back grounder £1,535.]

The following is from an article in the (Canadian) Report Newsmagazine, Daddy’s girl matures later—Stepfathers are shown to produce “precocious puberty” in young females, by Candis McLean, 2001 04 16, p 46. One in six girls in Britain now enters puberty by eight years of age, according to recent research. This compares with one in 100 a generation ago. “Girls are now having sex before their great-great-grandmothers had their first period. Half of all girls in Britain will have entered puberty by the age of 10,” announced Professor Jane Golding, director of the study at Bristol University’s Institute of Child Health last June after tracking the development of 14,000 children from birth. In North America, one in seven Caucasian girls and half of African-American girls enter puberty (develop breasts or pubic hair) by the age of eight. The parade of suggested triggers has included obesity, pollution and food additives (see this magazine, 16 November 1998). New research, however, suggests a radical new theory—that the father-daughter relationship is also a very important factor in when girls mature. One of the leaders in this research, American Bruce Ellis, is a psychology professor at the University of Canterbury in Christchurch, New Zealand . . . According to Prof Ellis’ research, “The clearest finding to emerge from this research was that it was the absence of warm, positive family relationships, rather than the presence of negative, coercive family relationships, that forecast earlier pubertal development in girls.” But, while warm relations with both parents predicted later puberty, the more relevant was “father-daughter affectionate-positivity”; in fact, the more time spent by the father in childcare when the daughters were four to five years old, the less pubertal development by Grade 7 . . . Prof Ellis does not think that pheromone exposure within the home is the only factor at work. He continues, “It is also likely that girls who have high-investing fathers in the home tend to begin sex and dating at a later age and thus have less pheromonal exposure to male dating partners in early adolescence.” He concludes his article (to be published in a book entitled Just living together: Implications of cohabitation for children, families, and social policy) with the statement that the inherent instability of cohabiting unions—an average duration of about two years—means any children will be three times as likely to live with a biologically unrelated parent which could result in earlier onset of puberty. In girls, this is associated with negative health and psychosocial outcomes: greater risk of breast cancer in later life, unhealthy weight gain, higher rates of teenage pregnancy, low birth weight babies, emotional problems such as depression and anxiety, and problem behaviors such as alcohol consumption and sexual promiscuity. [My emphasis -WHS] The Report article recommends to parents that to be successful in, Preserving childhood:
— Stay married.
— Keep stress levels down; do not overbook children’s activities.
— Prevent obesity.
— Provide a high-fiber diet with plenty of fruits and vegetables.
— Cut out fast food.
— Keep your daughter active; get her interested in a sport or out playing with other kids.
— Throw out the TV.
— Send early-developing girls to same-sex or age-segregated schools to reduce exposure to older boys.
The following is from the newsletter Common Sense & Domestic Violence, 1997 12 24 Children and Single Moms whether it is caused by violence or not, children living with single moms don’t do well in our society. It used to be the exception. Now it is becoming the rule and progressively worse. Is that not child abuse too?

**What We Know About Children from Single-Mother Families**

<table>
<thead>
<tr>
<th>Problem</th>
<th>Single-Mother Family</th>
<th>Two Parent Family</th>
<th>Relative Odds</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hyperactivity</td>
<td>15.6(69,480)</td>
<td>9.6(221,573)</td>
<td>1.74</td>
</tr>
<tr>
<td>Conduct disorder</td>
<td>17.2(73,659)</td>
<td>8.1(180,786)</td>
<td>2.36</td>
</tr>
<tr>
<td>Emotional disorder</td>
<td>15.0(67,205)</td>
<td>7.5(173,714)</td>
<td>2.18</td>
</tr>
<tr>
<td>One or more behavior problems</td>
<td>31.7(137,460)</td>
<td>18.7(418,894)</td>
<td>2.02</td>
</tr>
<tr>
<td>Repeated a grade</td>
<td>311.2(36,288)</td>
<td>4.7(78,026)</td>
<td>2.56</td>
</tr>
<tr>
<td>Current school problems</td>
<td>35.8(18,862)</td>
<td>2.7(46,120)</td>
<td>2.22</td>
</tr>
<tr>
<td>Social impairment</td>
<td>6.1(25,105)</td>
<td>2.5(51,344)</td>
<td>2.53</td>
</tr>
<tr>
<td>One or more total problems</td>
<td>340.6(128,895)</td>
<td>23.6(381,715)</td>
<td>2.21</td>
</tr>
</tbody>
</table>

1. Children from single-mother families are 2.21 times (221 per cent) as likely to have one or more total problems than those from two-parent families, twice as likely to have an emotional disorder, etc. (The probability of this being due to chance is smaller than 1 in 1,000.)

2. Weighted projections to reflect national population of children.

3. Data for items so annotated apply for 6- to 11-year-olds only. All other data in the table apply to 4- to 11-year olds. [Source: Growing Up In Canada, National Longitudinal Survey of Children and Youth (Human Resources Development Canada, Statistics Canada, Catalogue no 89-550-MPE, no 1, November 1996, p 91) Available from StatCan. It is only available in hard copy. $25 + GST]

**Stop Abuse of Men**

There has been a war going on for years, right under our noses. It’s sometimes violent, but oftentimes it’s a war of words. It’s been going on here in Britain for years, but only in the last few years has it been more prevalent. It’s a war on gender.

More specifically, it’s a war of women against men. We don’t see it on a casual basis, but we do see it in other ways—education, the workforce and our personal lives. And it’s time to stop and embrace the changes that have been made since the 1960s and 1970s instead of exclusively focusing on the few things we haven’t achieved.

In the beginning, the feminist movement made great strides in making sure women had rights in American society. But the problem now is that along with those strides, women have taken a step back because of those women that I commonly call “gender feminists”.

The definition of a gender feminist is that of a woman who hates men so much that she’s willing to advocate under the veil of rights for women but whose real agenda is to malign men. They are not to be confused with the women who are honestly making an effort to make sure there are equal rights for both men and women.

Christina Hoff Summers, in her book “The War Against Boys,” focuses on the aspect of the gender wars that has been having the most affect on boys—education. Boys today are less likely to go on to college, and are more likely to be put into detention or reprimanded just because they are boys.

Another aspect that’s often seen is in the law. Many of you might have heard about the guy dressed as Batman on the ledge of Buckingham Palace, who was protesting for father’s rights. Although it’s probably not the most effective way to get your point across, he did have a point—fathers have fewer rights after a divorce or separation, seen strictly as a financial windfall for the mother than as an important person in the child’s life.

I’ve read many stories online of terrific fathers being denied visitation because the mother, in her bitterness, either made accusations against the father of sexual or physical abuse that weren’t true or simply denied
visitation to the other parent. They then call them “bad fathers” because they’ve been worn down due to being denied access to their kids. A friend of mine had the former happen to him, and he hasn’t seen his daughter in a number of years because of it.

More evidence of the bias against men exists when you hear the term “deadbeat dad” in the news. Although there are some men who deliberately don’t pay child support, most are just guys trying to make ends meet after being forced to pay large amounts of child support that they can’t afford.

What are often ignored is the women who don’t have custody who refuse to pay child support—no one mentions the “deadbeat mom,” because it’s not “politically correct.” These women are often allowed to get away with not paying because they are the mothers.

**Conclusion**

We demand joint physical custody and all laws to be abolished re child support. Parents shall support children when they are with them, which can be physically arranged on a weekly basis where children have two homes each.

A fatherless society increases crime and that in turn feeds the legal system

Some advocates for mothers’ rights have claimed that the gender-neutral best interests standard disfavors mothers and operates to deprive women of a critically important bargaining chip with which to counter attempts to reduce child support and property distribution (Polikoff, 1982; Weitzman 1985). Singer & Reynolds (1988) for example, boldly state: Proponents (of joint custody) ignore what studies increasingly confirm: divorcing husbands routinely and successfully use the threat of a custody fight to reduce or eliminate alimony and child support obligations. Such custody blackmail has been identified as a major cause of the impoverishment of divorced women and their children.

However, in fact, there are no empirical studies that support such an argument (Maccoby & Mnookin 1992). In fact, the available data suggest that the opposite is true. There is solid evidence that parents in joint custody situations are much more likely to meet child support obligations. Studies of payment rates for joint custody parents, and those non-custodial parents who are able to remain a viable part of their children’s lives, show much higher compliance (Hillary 1985; Montana Child Support Advisory Council 1986; Pearson & Thoennes 1986; Lester 1991). Lester (1991) as one example authored a report for the US Department of Commerce, Bureau of The Census. The report indicated that fathers with parental responsibility pay 90.2 per cent of money owed; fathers with contact pay 79.1 per cent of the money owed, and fathers with neither parental responsibility nor contact pay 44.5 per cent of the money owed. Unfortunately the census report used only self-report figures of the mothers who were due to receive the monies, and those figures may be self-serving overestimates of non-compliance.

There is also considerable evidence that parents in joint parenting arrangements do more in terms of extras such as school payments and the like, which go beyond the court ordered financial responsibilities. While this result is more tentative than the conclusion on compliance, it would seem reasonable that by empowering someone, that person would be more likely to remain supportive financially, than if they are forced to become a mere visitor to their own children.

Data collected prior to the introduction of the Child Support scheme link contact between parents and children with levels of child maintenance payments. Funder (1989) found that absence of contact or conflict associated with contact was related to lower maintenance received. In its analysis of the pre-Scheme child support payments of over 3,000 parents, the Australian Institute of Family Studies found that payments were less likely to be made where contact was infrequent or not taking place (Harrison, Snider, & Merlo 1990). Other investigators described the weakening of ties between non-resident parents and children as a cause of child maintenance default (Wade 1980). These data, taken together, indicate that sole residence determinations, as opposed to joint residence determinations, tend to work against the economic best interests of children. Sole residence preferences lead directly to less financial support for children of divorce. The economic evidence suggests that seeking ways to increase non-resident parental contact with their own child is the most effective method of increasing compliance with child support orders.

*25 February 2005*
Memorandum by Refuge

CONTACT ACTIVITIES

Section 11C(3) requires the court to consider, before making a direction or imposing a condition, that “the contact activity proposed to be specified is appropriate in the circumstances of the case”.

Although 11C(7) specifically requires the court to consider information about the likely effect of making a direction and whether it might conflict with the person’s religious beliefs or times of work/study, Refuge would recommend including an additional clause, citing assessment for safety as a prerequisite to making a direction or imposing a condition.

11E refers to the power of the courts to direct parties to attend information meetings, meetings with a counsellor or parenting programmes/classes and other activities designed to deal with contact disputes.

Refuge suggests that the primary educative and remedial need for domestic violence perpetrators is to address their abusive behaviour rather than their parenting skill. Refuge would strongly recommend making attendance at a perpetrator’s programme or series of individual meetings where the impacts of violence/abuse upon children are discussed, a precondition of contact. Refuge would also urge the courts to exercise caution regarding the degree of “change” expected from attendance at such programmes.

FACILITATING AND MONITORING CONTACT

11F(5) officers of the court may be asked to monitor compliance with contact orders and orders for enforcement. Refuge believes it is important that officers of the court operate according to clear protocols which first require them to assess the reasons contact has broken down, being alert to the possibility that in circumstances of domestic violence, the reason may be new or renewed violence, threats of violence or other abuse.

11G(4) makes reference to the possibility of a “reasonable excuse” for failing to comply with a contact order though does not clarify what would be considered “reasonable” in these circumstances. One would hope that threat of violence or fear of the perpetrator would be considered “reasonable” enough to resist contact, however, both research and experience of working with women and children attempting to escape from domestic violence, suggests otherwise. The idea of “safe contact” appears to have seeped into the vocabulary of legislative change, with some asserting supervised contact with a violent man offers appropriate levels of protection from harm but the reality for some is that it does not.

For those who have been severely traumatised by abuse from a partner or father, even returning to them in memory or dreams can trigger psychological and physiological distress sufficient to interfere with daily living. The least we should offer those who have been wounded in this way, is a period of respite during which they can begin to recover from the emotional, psychological and physical harm inflicted they have endured.

11G(7) Orders for enforcement may be made by the court, or on application by a party to the proceedings. Care must be taken to ensure that such orders do not become one more weapon in the armoury of an abuser to further terrorise and control his victims.

It is of enormous concern to Refuge and others working to support domestic violence victims, that the government intends to legislate to enforce contact orders, without first legislating to ensure contact will be safe for all involved. Refuge believes such a move to be both dangerous and unjust. Refuge is of the view that one must first establish that contact will be safe before making the decision not to legislate in this direction. Evidence of women and children harmed both psychologically, physically and even fatally, continues to show that safety has not been established within the present system; leaving women and children vulnerable to further harm Refuge believes that a legal presumption of safe contact must precede legal enforcement of contact orders.

Refuge believes that a clear, accurate and agreed working definition of domestic violence, which incorporates a power and control analysis of abuse and its impact, is essential to identify, appropriately support and protect victims. Systems for assessment of psychological and physical risk must also be an integral part of the process, as should mechanisms for monitoring safety and wellbeing during existing contact arrangements.

March 2005
Memorandum by Mr George Rutter

Mr George Rutter, Paternal Grandparent. (Private individual not affiliated to any organisation.)

PART.1.—CONTACT WITH CHILDREN

1. 2. Facilitating and monitoring contact. Page 14 draft.

11F. Facilitating and monitoring contact.

Might I suggest that 5 (B) Line 42 be extended to read (B) “including any Indirect Contact included in the Contact/Residence Order.”

Even reasonable indirect contact (to the mobile phone provided at father’s expense) once per week can, and is, made difficult.

When the child is over 300 miles away from the non-resident parent and is only seen personally during school holidays I hope you can appreciate this is a critical issue in the interest of the child’s welfare.

2. 3. Enforcement Orders. Page 15.

11G. Enforcement Orders.

Might I suggest (7) Line 42 includes “including that which is reported by an officer of the Service or Welsh family proceedings Officer under 2 (11F) (5)(c)”

My reasoning here would be, why should the non-resident parent have to make application to the court, with all the attendant Legal Costs, when the proposed facilitating and monitoring contact, properly done, can expose non-compliance of the Contact/Residence Order. My Son has redress under the Section 63 (3) of the Magistrates’ Courts Act 1980 under a Court Residence Order if the child is prevented from seeing and residing with her father at the stipulated times set out in the court order. But no such immediate redress for non-compliance regarding indirect contact.

17 February 2005

Memorandum by the Shared Parenting Information Group

Thank you for your kind invitation to meet with the Committee on 3 March.

We will not be present, as we consider the government has missed a number of opportunities.

We reject the outmoded concept of “Contact”—we consider that parents should share Parenting Time—in recognition of the importance of the time which parents spend with their children after separation.

We do not see how outcomes for children who experience the separation of their parents can be improved by this Bill unless the government recognises the advantages of the world-wide growth of Shared Parenting and promotes it here.

Please present this e-mail to the committee.

Memorandum by Mr David Thomas

PERSONAL INTRODUCTION

I am David Thomas a 35 year old divorced father, and primary carer for my five year old son. I have been a user of the existing family legal system and support system. My experience has allowed me to see in great detail how the system handles many aspects of Private Laws cases. On a voluntary basis I now also support parents going through the difficult transition of separation and divorce, and therefore have I have a broad scope of experience and understanding of the current system and how remedial proposals will affect the effectiveness in dealing with family cases.

WRITTEN EVIDENCE

The current Bill is fundamentally flawed in that the fact that it tries to deal with problems that have been allowed to become live. The existence of difficult matters requiring enforcement powers for example, is mainly a manifestation of the failings of the existing family judicial system in the whole, and not because of the parents.
My argument is that once parents get into a mindset that the children are an issue that needs to be argued over, there is no doubt a need for an independent arbitrator, who can mediate at the first instance, but have authority to decide on issues that achieve no agreement, and enforce those decisions in law.

The existing laws do not place a socially unacceptable position relating to one parent frustrating a child’s relationship with the other parent when family breakdown occurs.

Therefore, because there is no clear guidelines and laws setting these standards, and combined with a failing legal system open to abuse, it is in fact an enticements for parents to act unreasonably, and extend their relationship difficulties into parenting difficulties which can be worsened by the recourse to the family law courts.

The current system sets a clear message that is based on adversarial litigation where the winner takes all and the loser at best gains scraps, in relation to their parenting status.

Such a position in law, and society creates a parenting class system where the parent with the greater position of power rules/dictates above the lesser class parent. These roles are clearly visible in the titles “Resident Parent” and “Non-Resident Parent”.

Children have a right to relations with both parents. It doesn’t state that this right is an equal right, or an imbalanced right; it is just their right. The imbalance of parenting power does not empower both parents equally to remain in the child’s life. Therefore the imbalance of power is the root cause to the problem relating to litigation, control and manipulation.

Wherever power of a person overrules another, that position is always open to potential abuse. The bill in question focuses on dealing with the abuse of parenting power, instead of dealing with the cause of the abuse of power. Single point reaction to a breach only addresses the breach in question and does nothing to change the parental conflict, or power imbalance that original caused the breach.

I have experienced first hand how a parent with power is supported in their actions, and empowered to abuse their position to the detriment of the child and the NRP.

Regardless of what a Judge determines as in the best interest of the child in relation to contact with the NRP, the RP has very little incentive to comply. So to discuss ways on how to punish non-compliance seems a backwards step. Many recalcitrant parents will become so stubborn in their beliefs, which they will willingly go to prison on the principle. The courts will be constantly sanctioning parents and the children will ultimately suffer from their parents’ flawed mindset/attitude.

The best approach is to encourage compliance to what has been determined as in the child's best interest. A great deal of resource is spent in family courts determining what is in the child’s best interest in each case placed before it. These efforts are futile if the parents do not uphold the final decisions, and it makes a mockery of the legal system, and renders the system useless.

There are several main steps that are needed to encourage and facilitate a good resolution to parental disputes after separation or divorce.

1. Society understanding that parents are “equal parents” in the eyes of the law. This requires a legal presumption of parenting status in statute.
2. A support system/organisation to assist, educate and guide families through the transition to post separation parenting roles. Diverting away from adversarial litigation, and recourse to the law.
3. Clear working guidelines of parental plans, on post separation parenting.
4. Strong powers to handle obstruction to working towards the child’s best interest. This indeed means courts and laws that have teeth.
5. A starting point of equal parenting, allows for the courts to make a clear sanction and limit the offending parents parental rights. This can come in the form of a shift in parental power. Sanctioning an equal (shared resident) parent to a contact (non-resident) parent is a far more powerful sanction than any proposed in this Bill.
6. A holistic approach to dealing with family breakdown, integrated services that best resolve conflict, risk assessment and child protection issues.
7. Eradication of all gender bias, with a firm foundation based on principle No 1 that a child’s best interest is served by maintaining a healthy relationship with both parents in the majority of cases, and therefore is the norm.
The Bill before the committee is focusing on No 4 in isolation of the other points. While the system is assessed in silos, there will never be a complete joined up review of policy and working practice throughout the Family legal system. Whatever this Bill produces in the way of sanctions and punishment, it will fail children, and their parents.

As per point 5. I am one of the few fathers to be successful in litigation to get a change of residency [ . . . ]. Many cases I have dealt with have not been so “lucky”. Courts are reluctant to place even the most logical sanctions upon hostile parents. Many fathers for example lose contact all together purely because the resident mother places obstacles that eventually affect the child’s welfare. Rather than remove the mothers ability to abuse the child, and his/her relationship with the father, the courts sanction fathers with minimum contact, and reward mothers actions be giving her the parenting power. This may reduce the effects of mothers’ hostility, but does little to allow the child to maintain a healthy relationship with their father. The importance of the child’s relationship with fathers is therefore considered less damaging than the actions of a hostile mother. This is fundamentally wrong, and shows clear bias, and lack of true understanding of the abuse that just occurred to the child.

Nothing is more clear in all walks of life, that if you give someone unlimited power, they can and often do abuse it. Whereas if there is equal power, this neutralises the ability to abuse a position. It does not eradicate the ability to abuse what power a person has, but it severely limits the scope of any abuse.

For decades society allowed men to abuse their power with regards employment and marriage, and women revolted and demanded equality. During these enlightened times of change and positions of equality, there has been a major omission in the demands from men to address the inequality that still exists in parenting primary carer roles. In fact there is still a presumption in society that given the choice of losing either parent, a child is best served by maintaining a mother over a father. This is clearly wrong where both parenting roles have established equally strong bonds.

The Committee reviewing Family Courts didn’t find it necessary to propose an equal parenting presumption, yet today the legal system and many parts of society have a mother parenting presumption. This gender bias is purely a social programming issue, based on historical roles in the days before female equality in employment and society was established. Therefore this presumption is outdated and needs to be eradicated in exactly the same way sex discrimination in employment has been tackled. Both situations need equality laws in place. We already have equal employment laws to help change the social understanding of equality in this domain. Now we need the same laws for parenting, and only when these are established will such notions of lengthy litigation, winner takes all, and punitive sanctions become a thing of the past.

I believe the Committee needs to clearly make statements that hit at the heart of the problem, and make radical statements that challenge the lack of any equality laws in parent roles. Children have a right to have relationships with their parents, yet the Government refuses to ensure these rights can be best met, by refusing to rubber stamp that in the eyes of society and law, both parents are equal. This has to be the starting point from which all of the assessments relating to the child best interests are met.

It is spin doctoring to insist that there cannot be a presumption of equal parenting status and have a paramountcy principle of the child’s interest. The two are linked, and in most cases mutually inclusive.

The conclusion for the Committee should be that the need for sanctions and greater punitive measures is a self-perpetuating need formed from the inherent failing of the family justice system. The current bill will create an even more hostile environment for parents to go into battle, and it does nothing to quench the fires that started at the point of parental separation.

You should be sending out a clear message that old titles are no longer conducive to the child’s welfare. A contact (NR) parent equals a sanctioned parent. A sole resident parent equals a superior parent. A shared residency parent equals an equal parent. Every case should start off with the presumption that all things being equal each parent can and should be considered capable of caring equally for the welfare of the child. Only when on a case-by-case basis this is proven not to be the case do sanctions and limits on the parents ability kick in. A parent not able to facilitate or accept equal parenting should be encouraged at all points to change their stance, in the face of no logical reason for their beliefs. Failings successful resolution and unhealthy attitudes to sharing parenting roles, sanction in the form of contact orders should be threatened, and if needed applied. Only by adopting this stance will we see less litigation, less pain and less damage to the bonds between children and their parents.

I hope you can consider my evidence in your review, and place suitable comments in your final report that send out the messages society needs to hear. Parents and children don’t need punitive measures; they need to be empowered to do the best for their family. The State’s role in family is to step in when the breakdown of the family starts to affect the child welfare, and it should put in place as many safety nets as required to avoid the need for heavy handed sanctions.
Memorandum by Leonid Yanovich

1. Whether the Proposed Contact Provisions, including Enforcement, are Appropriate and Proportionate

(a) Part 1 section 4(7) “In determining the amount of compensation payable by the person in breach, the court must take into account the person’s financial circumstances.”

This paragraph discriminates offenders based on their income. This is a clear license to offend with impunity for those living on benefits. Accountability for actions must be equal for all, save the mentally ill people. Therefore, this paragraph must be removed.

(b) Schedules Part 2 section 6(3) “The court may extend the period of its own motion or on an application by the person in breach.”

I believe that it should read “. . . or on an application by the applicant”. I can’t see that the person in breach would apply for an extension of enforcement.

2. Whether the Proposed Contact Provisions, including Enforcement, are Workable

(a) It is not clear what the legislators can achieve by imposing a curfew.

(b) Part 1 section 3(9) “In making an enforcement order, a court must take into account the welfare of the child concerned.”

and Part 1 section 4(9) “In exercising its powers under this section, a court is to take into account the welfare of the child concerned.”

There are loopholes here, as any enforcement can be argued to affect the child’s welfare and hence in practice undermine the proposed Bill. It should be rephrased so that the child’s welfare should be taken into account (perhaps with an involvement of another parent) while enforcement is taking place.

3. Joint Committee Members’ Interests

Some of the Joint Committee members may have a conflict of interests or a potential prejudice based on their previous work. From the Members’ Registered Interests I can see the following:

(a) Vera Baird MP: involvement with Women’s Aid work in Redcar.

(b) Ann Coffey MP: social worker before entering Parliament.

(c) Jonathan Shaw MP: social worker before entering Parliament.

(d) Howarth of Breckland, Baroness: Regular remunerated employment—Board Member (deputy chair) of CAFCASS.

(e) Gould of Potternewton, Baroness: Office-holder in voluntary organisations—Chair, East Sussex Women’s Refuge Project—fund raising committee Chair/Trustee; Voluntary organisations—Patron, Forward Patron, Brighton Women’s Centre.

24 February 2005