

# **Parental Separation: Children's Needs and Parents' Responsibilities**

## **Government Green Paper (2004)**

Submission from the National Family and Parenting Institute

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## Parental Separation: Children's Needs and Parents' Responsibilities

The National Family and Parenting Institute (NFPI) welcomes the Government's Green Paper *Parental separation: children's needs and parents' responsibilities* (July 2004) and is grateful for the opportunity to comment on the proposals it contains.

### Background

The National Family and Parenting Institute is an independent charity that works to support parents in bringing up their children, to promote the wellbeing of families and to make society more family friendly. It achieves this by: conducting and analysing research on services; advising Government and others on family policy; coordinating family and parenting organisations; producing public information for parents and practitioners; and campaigning for a 'family friendly' society.

As an organisation concerned to bring together research, practice and policy thinking, we applaud the Government's consideration of the existing body of research on family conflict and contact in developing its proposals. This body of evidence points to the particularly detrimental impact of conflict between parents on children's well-being and the potential for this impact to be exacerbated following separation if conflict spills over into contact disputes and children are caught between parents' animosity (Reynolds, 2001). We believe that as far as possible, parents should be able to access services that enable them to reach amicable contact agreements and to resolve differences without the interference of the courts. In addition to support over resolving contact disputes, we would like to see broader services in place, that ensure the safety of parents and children from family violence, that support family relationships, and that reduce the likelihood of parents resorting to embittered and entrenched positions.

We broadly welcome the proposals contained in the Green Paper and believe they will go some way to providing parents with the support they need to reach agreements that promote the welfare of children. However, we believe that the best interests of all family members, not just those of the children, would be better served by basing proposals around the principles set out in the Human Rights Act 1998 and the conventions that underpin it. Rather than being an adjunct to discussion, it would be preferable for Human Rights legislation to form the foundations and guiding principles of Government policy on contact and the initiatives that arise from it.

### Principles of contact

The NFPI supports the Government's commitment to promoting the best interests of the child but believe that the Human Rights Act 1998 (HRA) and associated conventions provide the best framework for doing so. Article 12 of the UN Convention on the Rights of the Child gives a child the right to a say over his or her destiny and Articles 6 and 8 of the European Convention on Human Rights accord any individual, children included, the right to respect for family life and a fair hearing, the latter implying access to due legal process. The emphasis on a child's right to be heard reflects what we know from research; that children benefit from an involvement in post separation decisions where that involvement is appropriate to their age and maturity (O'Quigley, 1999; Hunt, 2003; Hunt and Roberts, 2004). We are pleased that the Green Paper acknowledges this body of evidence in support of children's involvement in contact decisions, but we would like to see the Government go further and ensure policy on contact is framed in accordance with the provisions of the HRA.



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Under its family life provisions, the HRA also implies a parent's right to enjoy the society of his or her child. It is our view that while children's welfare is paramount and will always supersede the rights of a parent where there is a conflict of interest; children's wellbeing should be considered in conjunction with a parent's entitlement to respect for family life. Respect, in this instance, includes the right to continue to enjoy contact with a child. Such an approach offers a more open and balanced recognition of the multiple interests that are at stake and that need to be reconciled.

We welcome the recently published draft guidance for CAFCASS court officers (CAFCASS, 2004) and applaud its approach which puts at its centre recognition of and commitment to the rights of children and parents as enshrined in the HRA 1998. We consider that human rights legislation should be the starting point for principles and procedures for managing contact.

Recently, there has been considerable public discussion of the 50:50 principle in contact. The NFPI, in line with the Government, believes it is unhelpful to prescribe a 50:50 principle as the starting point for contact arrangements. We believe the approach set out in the Council of Europe's Convention on Contact Concerning Children (2003) and its supporting 'Explanatory Report' is the most effective way to manage contact disputes. Article 4 of the Convention states that "A child and his or her parents shall have the right to obtain and maintain regular contact with each other" and that "... such contact may be restricted or excluded only where necessary in the best interests of the child". We believe that the Government can meet its international obligations most effectively at the same time as promoting family wellbeing by setting the goal of court decisions and mediation as being to support parents in reaching agreements that maximise contact with both parties as far as is compatible with promoting a stable home environment.

### Discussion Questions

#### Discussion point a)

**Will the information, advice and proposed improvements in provision provide the practical help intended; and which aspects are most useful?**

The NFPI warmly welcomes the proposals to improve the information and advice available to parents. The NFPI's mapping and analysis of family support services (2001) across England and Wales highlighted a lack of support for couple relationships as well as poor provision of accessible, non-stigmatising family support available to families with children over 5 years of age.

#### The nature of appropriate information

We believe that all information should be developed to kite-marked standards and that in addition to distributing information to parents and the extended family, information should be developed for and distributed directly to children.

*Information for children, parents and relatives should include:*

- research evidence on the impact of family breakdown on children and young people, parents and others connected to the family.



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### *Information for parents should include:*

- guidance on the questions that are likely to pre-occupy children and that they often feel unable to ask for fear of hurting their parents
- guidance on the feelings likely to be raised by family separation and how to respond to children's fears and anxieties
- knowledge of age-appropriate ways of talking with and listening to children about painful matters
- information about different ways of making agreements about future living and contact arrangements, including parenting plans, mediation, family discussions, family conferences, the court process, CAFCASS, legal advice and legal aid
- ideas about different ways of handling contact, including information on contact centres.

And in line with guidance on the European Council Convention on Contact, parents should be informed about the importance for their child and for both parents of establishing and maintaining regular contact with their child (Article 7).

We believe information should be presented in line with findings from a large body of research about helpful ways of communicating with and relating to parents (Quinton, 1994; Walker 2001; Eborall and Garmeson, 2001). This evidence indicates that parents value information that is:

- good, balanced and non-judgemental
- helps them solve their own problems
- gives them practical help and advice
- provides insight into family relationships.

### **Parenting plans**

We welcome the continuing use of parenting plans and the proposition to include in them examples of good contact arrangements. They form part of the bank of supportive information that should be available to parents. However, plans should provide for the opportunity to seek children's views on the proposed arrangements and to signify their agreement to the plan.

### **Supporting and informing children**

Alongside information and support for parents we believe there should be improvements in the services and information made available directly to children, including improvements in information, advice, consultation and advocacy.

Information for children should include:

- how to be involved in decision-making
- how to access court proceedings and make their views heard.

### **Avenues to information and support**

The NFPI's mapping exercise also pinpointed problems in accessing information about those services that are available. We have argued that existing points of access to information and support need to be increased and enhanced. We welcome the proposal to develop information and services provided by existing

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providers of family and relationship support. We believe that those working directly with families, such as mediators, CAFCASS officials, relationship counsellors and others, should:

- be furnished with information packs or toolkits that form the basis of discussion with parents
- be gateways to information about local contact facilities
- trained in the conduct of family meetings and in family conferencing and should be gateways to information about local contact facilities.

Information should be made available to children and families via 'formal routes' such as schools, surgeries, local and community services, libraries, contact centres and CAB's as well as informal routes, such as supermarkets and the media. In addition, contact centres should act as points of referral to CAFCASS and mediation services.

Voluntary organisations that provide support and services should be required, as part of a kite-marking system, to provide frontline workers with good practice training in working with family conflict, domestic violence and child protection.

The many professionals who work with families and are likely to be turned to for help, such as GPs, nursery staff, health visitors, social workers, and teachers, should be equipped with a straightforward toolkit that enables them to provide parents and children with information and guidance on family conflict and violence.

We have also argued that there should be an enhancement and increase of universal family services. This end may be facilitated, in part, by putting in place a family support co-ordinator in each Local Authority with responsibility for championing family support and providing an up-to-date directory of local services. We would also like to see the LA provide information on CAFCASS, mediation, local services and contact facilities.

Finally, all support should be delivered in a way that reflects and meets parents' needs. For example, findings from projects into supporting parents (Quinton, 2004) suggest that parents seek support that:

- is offered as part of a respectful relationship
- is provided as part of flexible and diverse services
- allows parents to feel in control and treats them like adults
- lets them be partners in problem solving
- is practical and professional.

### **Discussion point b)**

**Are the improved pre-court interventions and the extension of in-court conciliation likely to deliver the help parents and children need in a better way than contested court hearings?**

### **Pre-court interventions and support**



### Legal advice

The NFPI supports the proposals to make legal advice more easily available through the Legal Service Commission helpline. As discussed earlier, we would hope that those dealing with enquiries are furnished with appropriate skills as well as relevant information.

The NFPI also supports proposals for accrediting family law solicitors and ensuring they have received appropriate training, particularly in dispute-avoidance approaches to conflict resolution. We would like to see all family solicitors equipped to provide information and guidance on family conflict and violence – something that might be achieved by providing toolkits that enable solicitors to talk through these issues with parents and children.

### Mediation

Mediation should be the foremost mechanism for resolving contact disputes and supporting families in making appropriate arrangements. We welcome the Green Paper's proposals to ensure that parents receive the strongest encouragement for seeking mediation and the funding of mediation through legal aid for eligible applicants. Alongside these proposals we would like to see all mediators equipped to run family meetings and conferences and to include children in the mediation process. In particular, mediators should receive training in techniques for involving children (both directly and indirectly), in seeking children's agreements to the arrangements that are made, and helping parents to communicate with their children and to elicit their children's thoughts and feelings.

### In-court conciliation

The NFPI supports the proposed mechanisms for reducing the number of cases that go to full proceedings. A range of services and support should be available to parents at this stage, including conciliation, mediation, dispute resolution and therapy and, where appropriate, services should be geared to listening to and taking account of the views of the children involved. However, we believe that services should not be imposed indiscriminately on individuals where there are genuine fears of violence or harm.

In order to be consistent with its international human rights obligations (see Council of Europe's convention on contact Concerning Children 2003), the objective of in-court conciliation, mediation and other services should be to reach agreements that maximise the amount of contact with both parents as far as is compatible with building a stable and secure home life.

### CAFCASS

The NFPI has long-argued that CAFCASS should take on a broader role and we welcome the Green Paper proposal for enhancing the support CAFCASS will provide families in reaching agreements. We applaud the approach outlined in CAFCASS's draft Contact Principles and Practice Guidance for Procedures and in particular welcome:

- its acknowledgement of the central role of Human Rights legislation



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- its focus on children's needs and rights by listening to and informing children; acknowledging and responding to their uniqueness; and putting their needs first
- the grounding of practice guidance in research based evidence.

However, we would like to see an even broader focus for CAFCASS so that it is more than a service for the courts. We believe CAFCASS officials should:

- provide an information and support-giving service to all the families with whom they work
- be in a position to refer to appropriate therapeutic services
- receive training and guidance on working with domestic violence and child protection issues
- have time and listening skills to understand children's situations, feelings and views
- provide family meetings and family conferences
- be linked into local planning for family support through local authority planning mechanisms.

### Discussion point c)

#### Will the steps to improve the court processes help parents?

The NFPI welcomes proposals to improve court processes by making them effective, timely and heard by the same judge. We believe that the Government has a duty to facilitate children's involvement in decision-making processes and provide for their agreement to court decisions, while taking account of the child's age and understanding. In particular, in line with Hunt and Roberts (2004) proposals, the following legal changes should be implemented:

- parents should be required to take account of their children's views, as under the Children (Scotland) Act 1995
- courts should be required to ascertain the children's views before granting divorce
- children should be given legal representation, particularly where there is a conflict of interest.

CAFCASS has an important role to play in facilitating children's involvement. CAFCASS officials acting for the court should:

- be trained in communicating with children
- be free to spend the necessary time it takes to gain children's confidence and respect
- be able to explain the court process
- and be able to explain what contact means for children's everyday lives and their feelings about parents, relatives and friends.

But, however skilled officials are, evidence shows that there are many circumstances in which it is vital for children to have access to separate representation. We know from research that:



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- divorce and separation are commonly embarked upon by women to protect women and children from assault
- children can experience profound and long lasting effects as a result of witnessing violence
- significant fear of violence can persist for parents and children long after a violent event or series of events, and is, in itself, debilitating with possible long-term effects
- at times of conflict and separation, parents are more likely to have difficulty in parenting and in actively understanding the distinctions between their own and their children's needs.

This evidence points to the importance of ensuring that children and young people's views, feelings and interests are fully represented to the court. This is especially vital for young children or those with communication difficulties and in cases where children resist contact, where parents are in dispute about residence or contact and in cases of actual or alleged child abuse or domestic violence. Such representation should include the opportunity to hear from children directly and the opportunity for children to speak with judges in their chambers.

We also believe that there needs to be a change in the assumptions that underpin children's rights to independent access and to initiate proceedings. The current situation represents a philosophical contradiction in the way children and young people are treated in criminal and in family law proceedings. Under criminal law, children are regarded as competent to be tried in court from age 10, unless grounds are established that they are not; yet under family law, their competence to initiate proceedings, participate in family courts and to initiate reviews of contact decisions is doubted.

### Discussion point d)

#### Will the proposed new post-order support and enforcement measures improve compliance?

The NFPI is aware of the range and complexity of the reasons behind breaches in contact orders. In view of this complexity we believe that mechanisms for ensuring compliance should not be punitive, not least because punishing parents is often counter to the best interests of the child. Rather, we agree with proposals to give judges greater flexibility in seeking compliance with orders to ensure that enforcement measures tackle those factors that are inhibiting compliance. For example, we see a role for compulsory mediation, parenting orders, court officials implementing a contact order, use of indirect contact, family meetings, and family therapy. We believe that recourse to these measures is more likely to result in increased compliance than the limited and punitive measures currently available to the judiciary.

It is also clear that the Government has a responsibility under international conventions to take all reasonable steps to enforce contact orders made by the courts. This has been consistently held by the European Courts of Human Rights (see for example, *Hokkanen v Finland* [1996] 1 FLR 289; *Ignaccolo-Zenide v Romania* (2001) 31 EHRR 7; *Glaser v United Kingdom* [2001] 1 FLR 153; and, most recently, *Kosmopoulou v Greece* [2004] 1 FLR 800).



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We see no value in compelling children to be in contact with a parent as we have consistently argued that children and young people need to have a greater say in contact decisions – both where parents reach agreements and cases that are disputed. However, we would support full use of indirect methods of contact, such as those laid out in the CAFCASS guidelines and believe these should be encouraged until such time as there is a change in the parent-child relationship. From what we know of children's experiences of separation, children's feelings often change over time (ChildLine, 1998; Wade and Neale, 2000) and decisions need to be flexible enough to accommodate changing feelings and circumstances.

### Family Assistance Orders

We welcome proposals to make broader and greater use of Family Assistance Orders. However, we would like to see them developed to include group programmes that link education on children's needs with a non-judgemental peer-based approach to supporting families through the, sometimes, tumultuous course of relationship separation and post-divorce parenting.



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