Initial Research Findings: The Typical Levels of Parental Involvement Where Post-separation Parenting is resolved by Court Order

This project is funded by the Nuffield Foundation, but the views expressed are those of the authors and not necessarily those of the Foundation.

Introduction

This case file study explored the typical patterns of parental involvement in post-separation parenting arrangements finalised by court order. It is estimated that 9-13% of parents resort to court to arrange their post break down parenting patterns (A Blackwell & F Dawe, *Non-Resident Parental Contact* (Office for National Statistics, 2003) at p39). We selected five County Courts (which we code-named Ambledune, Borgate, Cladford, Dunam and Esseborne), and looked at 197 case files which began as applications for a Section 8 Order and were recorded as ending in a final order between February and August 2011. The purpose of this selection was not to achieve generalizable results but rather to ensure that we encountered as many of the different types of issues that affect the use of contact and residence orders as possible. As current policy is to divert as many cases as possible away from court it is important to understand how cases that reached court were handled during this period.

In 174 cases (88%), the parties to the dispute were the two parents. In 23 'non-parent' cases (12%), one party was either a relative or, in one case, a neighbour and long-standing family friend. This article will focus on our findings in relation to the 174 parent versus parent cases.

Applications

In 28 of the 174 cases (16%), the parents came to court while still at the stage of initial relationship breakdown. This low figure suggests that Court was not generally the first port of call for parents. Moreover, there was evidence of previous Section 8 proceedings in only 43 cases (25%), which contradicts the impression often created that Family Courts are clogged up by cases that return again and again. In the remaining 103 cases, the parents had put in place informal arrangements that were no longer working or needed to be adjusted because of changing circumstances.

The largest group of applications, 74, were for contact orders (43%). There were 56 applications for sole residence (33%), 7 applications for sole residence in which the applicant also sought to regulate the other parent's contact (4%), 12 applications for a shared residence order (7%) and 12 applications for either contact or residence (7%). In two cases, the initial application forms were not in the files.

122 of the 174 cases began with an application by the father whereas only 52 initial applications were made by mothers. There was no marked gender difference relating to the numbers of initial applications for sole residence: 42 were made by fathers and 33 by mothers. However of the 74 applications for a standalone contact orders, 67 were made by fathers looking for an order to allow them to have contact with their children, the corresponding number for mothers was only 3 (4 applications were for a contact order to end or reduce the respondent's contact).

The Interim Stage

The process of resolution varied slightly between the five courts. In all courts a similar pragmatic and constructive approach was taken during the interim stage. It was rare for cases to proceed to a full, contested hearing; instead parties were brought closer through negotiation, different practical arrangements were tried out, and progress was monitored through a series of 15-minute directions hearings.

All cases were heard pre-LASPO. We found that drug and alcohol testing played a crucial role in the process of building up trust between parties. Where there were delays due to problems with obtaining funding or evidence from Cafcass or outside agencies such as the police, supervised contact was used effectively to avoid a hiatus. It was also clear that where cases took time, this was often time very well spent, not time wasted.

A4, for example, began as a high conflict case with a history of police call-outs to remove the father from the mother's flat. Mum initially did not want to allow dad any contact with their two-year-old son, nor would she attend mediation. Over the course of nearly two years, and twelve short directions hearings, contact was increased from two hours each fortnight at a contact centre, to weekly overnights in the parental grandparents' home, where the father also lived. Time was needed to try new arrangements and ensure they worked well for the child. There were avoidable delays in obtaining funding for drug and alcohol tests. During that time supervised contact, at the centre and with the grandparents, was used to progress the case. The father gave undertakings regarding alcohol and drug use and later drug tests were negative; there were no further reports of disturbances at the mother's address and good relationships seemed to have developed between all parties.

Final, formal orders

Did the applicants get the orders they had applied for?

In relation to contact applications, the question of whether applicants were successful was clear. 60 out of the 67 fathers who applied for an order to allow them to have contact with their children got an order for some contact (90%). Only one father's application for contact resulted in a prohibiting 'no contact' order; he had by that stage completely disengaged from both the court process and contact with the baby.

The 'success rate' of residence applications was more difficult to measure. The 33 sole residence applications made by mothers resulted in 19 sole residence orders; for the fathers, there were 17 such orders resulting from 42 applications. This suggests that gender was not the determining factor in disputes where a residence order was made. Instead, courts were rightly focused on managing the child safety concerns that were raised in many cases, or on maintaining a *status quo* that meant the child was settled and thriving.

Several of these factors were illustrated in C40. The parents were former addicts; their gender and previous parenting experience were understandably not as important to the court as the question of who had started using street heroin again, and would therefore not be able to care for the child. This question was answered by drug testing which determined that the mother was still using. This mother eventually sought help, but by that point the six-year-old was happy and settled with her dad in a new flat, with a new school and new friends, and the mother's application for sole residence was refused.

There was, in residence disputes, a general reluctance to move away from arrangements that were working well. Many cases ended in a residence order for the respondent and 19 cases ended in a 'shared residence' order.

Consistent with reported case law, shared residence orders were used for situations that could equally have been labelled contact (the children's time was only split near equally in 7 of the 19 cases that ended in shared residence order).

Time Patterns

When examining the final time share pattern of parental involvement, the 174 cases were divided into six categories. The first category, cases where no primary care giver could be identified, was small, with only 9 cases (5%). Children in these cases spent at least 40% of their overnights with each parent, spread across term-time weekdays as well as weekends and school holidays, so that it could be assumed that both parents were equally involved in their children's daily lives. The orders in this category could be highly detailed, with provisions for contingencies such as child, parental or child-minder's illness, family birthdays, inclement weather and managing the transition to the term-time patterns when a school holiday ends or starts mid-week. This gave an insight into how demanding such an arrangement can be.

In 78 cases there were regular overnight stays with the contact parent. This was the largest category of cases (45%), and it appeared from the case files that courts deliberately worked towards overnight contact in the parent versus parent cases unless there were cogent reasons against this.

In E11, for example, contact with a toddler was reintroduced after six months of no contact, and over a year gradually increased from two hours at the mother's house to a whole day with dad, and finally alternate weekend sleepovers. A relationship of trust had to be re-established. For example, in one interim order the father promised to show the mother the child's new bedroom before overnights took place.

When the first two categories are taken together, this means that half of all the cases resulted in regular overnight contact. This is encouraging given that serious concerns about one parent's ability to adequately meet the child's needs were raised in 40% of all cases. The use of interim orders allowed these concerns to be monitored and managed.

In 34 cases (19%) the final order was for daytime only contact. This was often because the child was quite young or where contact had only recently been reintroduced. In D15, E18 and E37 it was spelled out that the problem was the non-resident parent's lack of suitable accommodation. In A9 and C35 there seemed to be some doubts about the non-resident parents' reliability and commitment to contact.

In 10 cases (6%) contact was left to the parties to agree informally. In some cases one parent had moved abroad, in other instances teenagers were given the freedom to make their own arrangements.

In 14 cases (8%) contact was either supervised (by relatives or in contact centres) or monitored by children's services. In the 11 cases where supervision requirements were retained in the final orders, there were concerns about the contact parent's addiction and/or mental health in 7 cases; in four cases mothers had raised concerns against a case history of domestic abuse. The three cases where it was expressly recorded that contact would be monitored by the local authority showed that Section 8 cases could be a *de facto* alternative to public law proceedings.

In eight cases (5%), the final order was for indirect contact only. In three of these cases, it was thought better to 'keep the door open' (a phrase used in order preambles) through indirect contact because forcing direct contact against older children's strong opposition was likely to prove counterproductive.

17 cases ended without any contact being arranged for the non-resident parent. In 7 of these 17 cases, the potential contact parent failed to appear at court, either for the final hearing or at all. In the other ten cases, the reasons against contact were set out clearly in the file: some were based on domestic violence or children's vehement objections, and it was not uncommon for these non-resident parents to lead chaotic lives, have erratic parenting styles or battle with multiple problems.

Conclusion

In conclusion, these courts worked towards regular overnight contact as the norm. Orders for no contact were very rare. This suggests that involvement by both parents was being encouraged and facilitated without the need for an additional legal presumption that reminds courts to do this. As could be expected, the population examined included many difficult cases involving parents who were often addressing multiple issues such as addiction and poor mental health. Only a small minority of the cases featured implacably hostile parents and repeated returns to court to argue the same points of contention. Instead, there were real issues to be decided, and the courts' pragmatic problem-solving approach included a realistic recognition that often it had to take a little time, and multiple reviews, to find the best solutions for these families and leave them in a place where they could deal adequately with future problems. We concluded, in the light of the current emphasis on other forms of dispute resolution, that many of these cases could not have been diverted to mediation but needed to be heard by a Court, and were most effectively resolved in this manner.