



Dealing With Child Contact
Issues: A Literature Review of
Mechanisms in Different
Jurisdictions

Crime and Justice



**DEALING WITH CHILD CONTACT ISSUES: A
LITERATURE REVIEW OF MECHANISMS IN
DIFFERENT JURISDICTIONS**

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CONTENTS

EXECUTIVE SUMMARY	1
MECHANISMS ADDRESSING CONTACT ISSUES: THE GENERAL APPROACH	2
AUSTRALIA	2
CANADA	3
UNITED STATES	3
SWEDEN	3
NEW ZEALAND	4
FRANCE	4
DENMARK	4
ENGLAND AND WALES	4
CONCLUSION	5
DEALING WITH CHILD CONTACT ISSUES: A LITERATURE REVIEW OF MECHANISMS IN DIFFERENT JURISDICTIONS	6
THE INTERNATIONAL SCOPE AND CONTEXT	7
TERMINOLOGY	8
IS CONTACT WITH A NON-RESIDENT PARENT GOOD FOR CHILDREN? OR <i>WHEN</i> IS CONTACT GOOD FOR CHILDREN?	9
MECHANISMS ADDRESSING CONTACT ISSUES: THE GENERAL APPROACH	11
AUSTRALIA	11
CANADA	15
UNITED STATES	18
SWEDEN	22
NEW ZEALAND	23
FRANCE	24
DENMARK	25
ENGLAND AND WALES	25
CONCLUSION	29
REFERENCES	31

EXECUTIVE SUMMARY

The issue of child contact following parental separation and how family law and policy could facilitate the making of good child contact arrangements was the subject of much discussion during the passage of the Family Law (Scotland) Act 2006. This report presents the findings of a small literature review of mechanisms for dealing with child contact issues across jurisdictions in order to inform future discussions.

Many if not most child contact arrangements following parental separation are decided privately by mutual agreement between parents, with little involvement of social agencies or courts. Other families use family support services. Thus, court-based mechanisms for managing parent child contact should be seen within the wider context of much more prevalent private ordering and use of support services directed towards this issue.

The mechanisms considered in this review encompass advice, information and education mechanisms (including parenting plans, parenting agreements, parenting education), legislative, court-based and civil law mechanisms, and relationship support and social welfare support and service mechanisms, both those linked to or mandated by the courts and those independent of them. These various mechanisms can be applied in the contexts of contact dispute prevention, resolution or enforcement. The review looks at how some jurisdictions address contact issues where there has been a history of intractable conflict, child abuse or neglect or domestic abuse.

A selection of countries with similarities to Scotland are surveyed, including England and Wales, France, Sweden, Denmark, Australia, Canada, the United States and New Zealand. Many share with Scotland key values that inform child contact mechanisms, and a common international legal context, principally enshrined in the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child. While some jurisdictions share the Scottish legal framework of parental responsibilities and rights, and its legal terminology of residence and contact, others use terminology such as custody and visitation or access.

Although it does not mention contact directly, Article 8 of the ECHR implies that a child has a right of contact with his or her parents and wider family as one part of their ‘right to respect for his private and family life’. The principal legal framework governing contact in Scotland is set out in Sections 1 and 2 Children (Scotland) Act 1995, which define parental responsibilities and associated parental rights (PRRs). Amongst these is the responsibility (and associated right) of a non-resident parent to maintain contact with their child, if that would be in the child’s best interests. S.11 of the Act sets out the orders a court can make, including an order in s. 11(2) about where a child should live (a residence order) and an order regulating the arrangements for maintaining contact between a child and a person with whom the child is not living, e.g. a non-resident parent (a contact order). However these particular provisions are set in the context of the three overarching general principles guiding any court action in relation to children, as set out in s. 11(7) of the 1995 Act, namely

- ‘the court must regard the welfare of the child as its paramount consideration’,
- the no-order principle: that the court should only make an order if it is better than making no order,
- ‘Taking account of the child’s age and maturity, the court shall so far as practicable give the child the opportunity to indicate whether he or she wishes to express any views on the matter in dispute; if the child indicates that he or she does wish to

express views, give him or her the opportunity to do so; and have regard to these views.’

In relation to the question of whether contact with a non-resident parent is good for children, there appears to be a general legal presumption in almost all of the jurisdictions examined that contact with a non-resident parent is good for children. However *whether* contact with a non-resident parent is good for children is pervasively questioned in much of the literature examined, and what may be in children’s best interests generally may not be in an individual child’s best interests. Two such instances of whether a child’s best interest is served by contact are where there has been a history of domestic abuse or intractable conflict. O’Connor (2002) concludes “Ongoing contact seems positive for most children, but there are instances when contact is definitely harmful and the child would be better off without it.’ Particularly damaging to children is conflict that is ‘frequent, intense, physical, unresolved and involves the child’ (Buchanan and Hunt 2003). One recurring message is that positive outcomes for children are associated with frequent and predictable contact. The presumption in law in favour of contact by non-residential parents as being in a child’s best interests may be misplaced. In view of the fact that the cases that end up in court tend to be at the high conflict end of the spectrum, a more neutral legal stance in which each case is decided on its merits might accord better with the research evidence which emphasizes the quality of the non-resident parent/child relationship, and in particular the absence of conflict in the post-separation parental relationship.

Remarkably lacking in the literature surveyed are any practical measures to address the failure to meet the parental responsibility of maintaining contact by the sizeable minority of non-residential parents who lose contact altogether, even where the child concerned positively desires contact and this would be in the child’s best interests.

Mechanisms addressing contact issues: the general approach

There are a variety of mechanisms that span legal and social services in addressing residence and contact issues following separation. Typically there is a mixed methods approach combining information, advice and private ordering to support parents in making arrangements, with an assortment of social services and family support services to help with disputes or with changing arrangements, and finally, with legal and court interventions for the more intractable, conflicted or complex cases. The graded approach addresses in their respective tiers the contexts of contact dispute prevention, resolution and enforcement. The approach is mainly based on the principles that the best interests of the child remains the most important issue; that following separation, shared parental responsibility should be encouraged; and children should continue to be able to spend time regularly with the parent with whom they are not living. In many jurisdictions, parents are encouraged to develop parenting plans and to try to resolve contact and residence issues privately, perhaps with the help of family services, before recourse to the courts.

Australia

Australia has a federal family law and family court system in which individual states comprise separate legal jurisdictions, with the common legal principles since 1996 of shared parental responsibility and the child’s best interests to govern post-separation parenting and

child contact. Recent major reforms introduced a highly integrated set of family and legal services, mainly through a network of community-based government funded Family Relationship Centres acting as a single entry point to the family law and family support system. The system also includes Early Intervention Services such as family relationship counselling, mediation, education and skills training, on-line information services for parents and family violence services and Post Separation Services, including contact centres, a Contact Orders Program, Children's Contact Services and Family Dispute Resolution Services. Lawyers and courts are intended as a last resort.

Canada

The 1998 report, *For the Sake of the Children*, rejected a formulaic approach to dealing with contact, recognizing the diversity of family life and arguing that individualized, informal agreements made by parents were more likely to be in the child's best interests. A 2002 study, of Canadian mechanisms for contact dispute prevention, resolution and enforcement, observes that 'most separating or divorcing couples appear to resolve their access arrangements without high conflict or extensive use of the courts'. Services to support separating and divorcing couples are delivered at provincial levels, although some receive federal support. There are different and wide mixes across provinces of counseling, mediation and information, parenting plans and parenting education services available. Dispute resolution services include counseling, mediation and arbitration for access enforcement. Contact centres offer supervised or supported access. Sanctions available to the courts for access enforcement also vary, and can include civil contempt, fines, imprisonment and compensatory access.

United States

Each state in the United States comprises a separate legal jurisdiction, and, like Canada, there is a varied mix of mechanisms used to address contact issues, with very uneven levels of provision. Innovative educational and mediation programmes have been introduced in some states, although most have not been evaluated by research. Some of the mechanisms available to deal with contact issues include parenting plans, parenting education programmes, parenting coordinators who help parents to contain conflict and make joint decisions, mandatory and voluntary mediation, and programmes to address non-compliance with contact orders.

Sweden

In Sweden, contact operates with a graded mix of private ordering, social services and family courts. The presumption is for both parents to have automatic joint custody of (i.e. legal responsibility for) their child, if they are married, that remains so after separation when the child might live with one parent. Child contact is seen primarily as a child welfare issue, and there is no specialist family court within the Swedish legal system. Agreement and cooperation is encouraged between separated parents on custody, residence and access, supported and facilitated by local social services first, followed by court intervention afterwards if necessary. Law reform in 2006 was based on the two principles: the best interests of the child and the right of the child to be heard. There is a child-centred approach to contact decisions, and a presumption that a child needs a good and close relationship with

both of its parents. Regard must be given to the risk of any harm to a child or another family member, and to the child's wishes.

New Zealand

The New Zealand family court system that governs residence and access emphasizes children's rights, consulting children about decisions that affect them, parental responsibilities (rather than rights), ongoing joint parental responsibility after separation, and cooperative parenting after separation. The welfare of the child is paramount and children are entitled to have independent legal representation. Parenting orders have replaced custody and access orders, with an emphasis on parents cooperating with each other and reaching agreement about the care of their children (possibly recorded in a parenting agreement or confirmed in a court order). If parents cannot agree, the Family Court can intervene, drawing on services such as professional counseling, mediation conferences, and a formal court hearing; parenting orders are seen as a last resort.

France

Mediation was introduced in 1996 and has been further integrated since into the civil code governing divorce and family matters. The legal process focuses on achieving informal agreement. When a divorce action is raised, a civil judge meets each of the parties separately and without lawyers at least once, emphasizing the benefits of reaching agreement with regard to the children. Supporting family services include mediation and contact centres, which have been extensively developed since the late 1980s as a 'neutral' space for facilitating contact in difficult cases.

Denmark

In Denmark, divorce is dealt with as an administrative matter and there are three types of measures that aim to support children and parents in relation to child custody and/or contact: 1) The Regional Government administration deals with decisions on child custody and contact and offers free, professional, voluntary and confidential counselling to parents who disagree over custody or contact; 2) Mediation is offered free of charge to parents who disagree about custody or contact. Both parents must agree to attend and there are two mediators, one lawyer and one person with experience in child cases; and 3) meetings for children whose parents live apart, so that they can meet with other children of the same age and with similar problems. Counsellors with experience in child cases attend these meetings.

England and Wales

Responsibility for family justice (and child contact) rests with the Ministry of Justice, which aims to improve information and advice to parents, promote alternative ways to resolve disputes, such as in-court conciliation, and mediation, and to give the courts more flexible powers in contact cases through the Children and Adoption Act 2006. The great majority of families involved in parental divorce make their own arrangements for residence and contact without recourse to the courts. There are no explicit guidelines or norms about contact,

although parenting plans are thought by practitioners to be a useful framework for working with parents. No evaluation or research to assess their value has been carried out. A *Family Resolutions Pilot Project* began in 2004 as an innovative court-based intervention to help parents manage conflict and develop more cooperative post-separation parenting. It has three stages. Parents who have raised a contact action can be referred by the courts. First, a video is presented about the effects of conflict on children, followed by a discussion. Next, parents are seen separately to focus on managing conflict. Finally both parents meet together with a CAFCASS adviser to plan post-separation parenting.

Conclusion

A selection of mechanisms for dealing with contact issues across a range of jurisdictions was presented. Almost all regard the best interests of the child as paramount. The mechanisms have a variety of purposes along a continuum of contact dispute prevention, resolution and enforcement and are usually part of a mix that spans legal, social and family services. They encompass advice, information and education (including parenting plans or parenting agreements, and parenting education), legislative, court-based and civil law mechanisms, and relationship support and social welfare support and service mechanisms, both those linked to the courts and independent of them.

The value of research evidence is stressed, and for this highly controversial area of family law in particular, the need to ground policy in solid evidence is repeatedly emphasised as a means of assessing claims by various stakeholder groups. It was relatively rare to encounter systematic and robust research evaluations of the services under review and much of the literature was of a descriptive rather than analytic nature.

A typical model for jurisdictions that have reformed their approaches recently is a graded mixed approach, almost pyramid-like, ordered by the level of conflict being addressed. This model combines information, advice and private ordering at the first tier to support parents in making arrangements, followed by a mix of social services and family support services to address disputes or the need to change arrangements to reflect children's or parents changing needs and availability, backed up by legal and court interventions (and specialist services) for the more intractable, conflicted or complex cases such as cases involving violence, child neglect, breaches of contact agreements or orders or denial of contact.

DEALING WITH CHILD CONTACT ISSUES: A LITERATURE REVIEW OF MECHANISMS IN DIFFERENT JURISDICTIONS

“It is frequently asserted, in the public debate, that the issue of child contact is managed much better in other jurisdictions. Sometime these statements are based on a misunderstanding of other legal systems or go beyond the evidence available. However since policy-makers, opinion-formers and practitioners are usually not in a position to critically evaluate such claims, they mistakenly acquire the status of proven fact” (Hunt with Roberts 2005, p. 1).

This report presents the findings of a small scale literature review of mechanisms for dealing with child contact issues across jurisdictions. These mechanisms include both those associated with the courts and those independent of the courts. It should be borne in mind that many if not most child contact arrangements following parental separation are decided privately by mutual agreement between parents, with little involvement of social agencies or courts (Bainham 2003). The issue of child contact following parental separation and how family law and policy could facilitate the making of good child contact arrangements was the subject of much discussion during the passage of the Family Law (Scotland) Act 2006. Policymakers wish to enhance their understanding and opportunity for policy learning from elsewhere on how contact issues are dealt with in other jurisdictions.

The review, originally for Scottish Executive policy makers, was carried out by Fran Wasoff, Professor of Family Policies at the Centre for Research on Families and Relationships and the School of Social and Political Studies, University of Edinburgh in late 2006 and 2007, for the Office of the Chief Researcher, and on behalf of the Civil and International Law Division of the Justice Department of the Scottish Executive. It was designed also to inform the research programme of the Analytical Services Division of that Department about child contact following parental separation and other aspects of the Family Law (Scotland) Act 2006. It complements earlier work carried out by Wasoff on contact enforcement in Scottish courts (2006a) and on private arrangements for parent-child contact (2006b) for a Scottish Executive/ESRC Public Policy seminar in May 2006.

It is important to understand court-based mechanisms for managing parent child contact within the wider context of the much more prevalent private ordering and the social service and family support services also directed towards this issue. The mechanisms considered in this review encompass advice, information and education mechanisms (including parenting plans or parenting agreements, and parenting education), legislative, court-based and civil law mechanisms, and relationship support and social welfare support and service mechanisms, both those linked to or mandated by the courts and those independent of them. These various mechanisms can be applied in the contexts of contact dispute prevention, resolution or enforcement. Some themes cut across these different types of mechanism, such as the extent to which each seeks to ascertain the views of children and facilitate their participation in major decisions that will affect them. This review will look at how some jurisdictions address contact issues where there has been a history of intractable conflict, child abuse or neglect or domestic abuse.

The international scope and context

The review looks at countries with similarities to Scotland. It was also partly guided by the availability of material in English that was accessible within its time constraints. It includes England and Wales, France, Sweden, Denmark, Australia, Canada, the US, and New Zealand.

Many jurisdictions share with Scotland certain key values that inform child contact mechanisms, and a common international legal context, principally enshrined in the European Convention on Human Rights and the UN Convention on the Rights of the Child.

For example, Article 7 of the UNCRC states: “The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.” Although it does not mention contact directly, Article 8 of the ECHR implies that a child has a right of contact with his or her parent and wider family as one part of their ‘right to respect for his private and family life’, as shown by various decisions of the European Court of Human Rights.

While not considering specific legal mechanisms to deal with contact issues, Bainham (2003: p. 77) comments about the legal principle of contact: ‘contact is a right which entails corresponding duties. The fact that it is qualified and may be displaced, especially by considerations of the welfare of the child, is not at all a reason for denying its existence. The maintenance and continuation of family life between parent and child is achieved legally through the contact regime which, at every turn, has important human rights implications.’¹ Bainham observes that the European Court has held that the state has a responsibility in relation to private disputes about contact inasmuch as there is a public duty to ensure that human rights are not violated. Nevertheless, these provisions in international law underpin the provision of legislation such as the Children (Scotland) Act 1995 which establishes the child’s right to have her or his views heard, and by decision-making being guided or determined by what is in the best interests of the child. While some jurisdictions share the Scottish legal framework of parental responsibilities and rights, and its legal terminology of residence and contact, others use terminology such as custody and visitation or access. Many jurisdictions also share with Scotland a range of services to support child contact, such as mediation services for parents or contact centres to facilitate supervised contact.

The literature surveyed draws on the author’s existing knowledge of the area, as well as on relevant material over the previous 10 years from the UK, Europe, North America and Australasia identified for the purpose of this work. The scoping methods used for this report are eclectic and include

- a search of a major electronic database, Web of Knowledge/Web of Science, for relevant publications since 1997,
- searches of the University of Edinburgh and the National Library of Scotland catalogues,

¹ It has also been argued that Article 8 of the ECHR also gives parents a right of contact to their child but the European Court has denied that grandparents should have an automatic right of contact. (Bainham 2003: p. 65).

- following citation pathways, by following up bibliographies of key studies, such as Hunt, 2004, 2005,
- limited communication with academic colleagues working in or with knowledge of other jurisdictions,
- reference to papers presented to academic conferences, as yet unpublished, and to selected press reports
- selective examination of key websites in the area, such as those of family research and policy organisations, and by following links which looked promising.

Two reviews on similar themes proved to be particularly useful, by O'Connor (2002) and by Hunt with Roberts (2005), the latter an excellent and comprehensive, though succinct review: *Intervening in litigated contact: ideas from other jurisdictions*. References to both works appear throughout this review.

Terminology

The legal terminology, concept or category to describe the relationship between a child and its non-resident parent varies across jurisdictions, referred to alternatively as contact, access or visitation rights. All encompass the variety of living and communication arrangements between children and a parent with whom the children mainly do not live. These arrangements can be the result of lengthy and complex processes that may evolve over time in response to changing needs and circumstances. The principal legal framework governing contact in Scotland is set out in Sections 1 and 2 Children (Scotland) Act 1995, which define parental responsibilities and associated parental rights (PRRs). Amongst these is the responsibility (and associated right) of a non-resident parent to maintain contact with their child, if that would be in the child's best interests. The Family Law (Scotland) Act 2006 extends automatic PRRs to unmarried fathers who are recognised by the mother and themselves as the father in the Register of Births. However these particular provisions are set in the context of the three overarching general principles guiding any court action in relation to children, as set out in s. 11(7) of the 1995 Act, namely

1. 'the court must regard the welfare of the child as its paramount consideration',
2. the no-order principle: that the court should only make an order if it is better than making no order at all,
3. 'Taking account of the child's age and maturity, the court shall so far as practicable give the child the opportunity to indicate whether he or she wishes to express any views on the matter in dispute; if the child indicates that he or she does wish to express views, give him or her the opportunity to do so; and have regard to these views.'

S.11 of the 1995 Act sets out the orders a court can make, including an order in s. 11(2) about where a child should live (a residence order) and an order regulating the arrangements for maintaining contact between a child and a person with whom the child is not living, e.g. a non-resident parent or a grandparent (a contact order).

Is contact with a non-resident parent good for children? Or *when* is contact good for children?

As in the 1995 Act, the general legal presumption in almost all of the jurisdictions examined is that in most cases contact with a non-resident parent is good for children. But *whether* contact with a non-resident parent is good for children is not taken as a given but is pervasively questioned in much of the literature on contact mechanisms. Rather, the question often asked is in what circumstances is contact in the best interests of the child and when isn't it? For that reason, some of the key findings are presented here, if only to contrast the message emerging from research with the predominant legal presumption of contact.

In considering the mechanisms for dealing with child contact, it is important to articulate the principles or objectives governing contact decisions, and how these accord with the research evidence. What may be in children's best interests generally may not be so in an individual case. The best interests test as applied to the individual case seems to be the best guide, as is when contact is in an individual child's best interests.

One instance of where it is questionable if a child's best interest is served by contact is where there has been a history of domestic abuse. Writing from a family law perspective, Maclean (2004) succinctly summarises the main question for research: "It is generally agreed that it is important for children to maintain their relationship with both parents. But, how important is it that a non-resident parent has contact with their children when this is not welcomed by the parent with care nor by the children, or where there are questions about inadequate parenting or domestic violence?" O'Connor (2002: 9) echoes this point in the context of a major Canadian comparative study: "the assumption underlying efforts to reduce unwarranted access denial and increase parents' exercise of access is that the child's best interest lie in maintaining ongoing relationships with both parents after separation or divorce" although the evidence from research to support this assumption provide no consensus. She concludes (p. 12):

"Ongoing contact seems positive for most children and better for them than no contact, but there are instances when contact is definitely harmful and the child would be better off without it. . . .The literature seems to confirm that access matters significantly to children when the parents cooperate or manage their conflict, and when the child has a meaningful relationship with both parents. When some children are subject to certain kinds of conflict and parental behaviour, however, ongoing contact may directly harm them."

Another major study that synthesizes the research literature on the impact of divorce on children (Pryor and Rodgers 2001: 214) reaches a similar conclusion: "the assumption that contact *per se* is measurably good for children does not stand up to close scrutiny." This point is supported by Buchanan and Hunt (2003: p. 366) in their review of the relationship between contact and child well-being in separated families. They observe: "Much more work needs to be done to explore the ways in which contact may or may not be beneficial to children [but] there are two areas in which research is beginning to sketch in the gaps in the picture. The first is the relationship between the child and the non-resident parent, the second the extent to which the child is caught up in adult conflict." (p. 366).

The dominant message is that it is conflict in the parental relationship, and not contact *per se* that is key to understanding the benefits or otherwise of the relationship between children and

non-resident parents. Buchanan and Hunt summarise the research evidence on contact and long term outcomes for children as a 'double-edged sword'. On the one hand, parenting by a non-resident parent that is close and authoritative (which can only occur if frequent contact is taking place) is associated with children's academic success and fewer problems. On the other hand, they cite numerous studies that point to the long term problems for children created by conflict between parents, both before and after they divorce. Particularly damaging to children is conflict that is 'frequent, intense, physical, unresolved and involves the child (2003, p. 367).

Is domestic violence always a contra-indication for contact? This issue has attracted increasing attention from policy makers, such as the Lord Chancellor's Department Advisory Board on Family Law, Children Act Subcommittee's 2002 Report, *Making Contact Work*. Buchanan and Hunt's study found high levels of reporting of domestic violence by those involved in a court dispute about contact or residence (78% of cases reported by at least one parent) and very high levels of concern expressed by the residential parent (86%) of the adequacy of the parenting behaviour of the non-resident parent, and this was a major factor in resisting contact.

Pryor and Rodgers think domestic violence is not invariably a contra-indication for contact, expressing the issue succinctly: (2001: 206)

'There is no doubt that being victims themselves of violence, and witnessing violence between their parents, both have damaging consequences for children. Far less clear, though, are the possible risks and benefits of children maintaining contact with a father who has abused their mother. . . . What are the risks associated with continued, physically safe involvement with an abusive father? Does the benefit of contact outweigh some of the risks that might be involved? We have almost no evidence upon which to rely in answering these questions.'

Some studies conclude that children generally want more contact than they have with a non-resident parent and regret the loss of contact if that should happen. Another recurring message is that positive outcomes for children are associated with frequent and predictable contact. However some recent studies have cast doubt on an association between contact and children's well-being, either arguing it is complex and may be linked to the quality of the relationship rather than the quantity of contact (Lamb et al 1997), or have no relationship at all (O'Connor 2002: 10, quoting the US National Longitudinal Study of Youth in relation to the latter point). An influential study by Kelly (1993) concluded that the residential parent's well-being is a stronger predictor of positive child outcomes than ongoing contact with a non-residential parent.

The view that contact is generally beneficial to children but in some cases may not be is held by Dunn (2003), who observes that it may not be beneficial when contact provides an occasion for more parental conflict. She quotes (2003: 28) Amato and Rezac (1994) who found that children's behavioural problems increased where contact created opportunities for high levels of conflict between parents. She further comments that children's own views should be taken into account.. She cites (2003: 27) a 1996 American study by Thomas, Farrell and Barnes of adolescents in single mother families. For white adolescents, father contact resulted in lower rates of delinquency, drinking and drug use, whereas the opposite was true for black adolescents who had fewer problems when there was no paternal involvement.

To conclude, as illustrated from the research evidence identified here, it seems that the presumption in law in favour of contact by non-residential parents as being in a child's best interests may be misplaced. In view of the fact that the cases that end up in court tend to be at the high conflict end of the spectrum, a more neutral legal stance in which each case is decided on its merits might accord better with the research evidence which emphasizes the quality of the non-resident parent/child relationship, and in particular the absence of conflict in the post-separation parental relationship.

Mechanisms addressing contact issues: the general approach

Across a number of the jurisdictions examined there are a variety of mechanisms that span legal and social services in addressing residence and contact issues following separation. Typically there is a mixed methods approach combining information, advice and private ordering to support parents in making arrangements, with an assortment of social services and family support services to help with disputes or with changing arrangements, and finally, with legal and court interventions for the more intractable, conflicted or complex cases. The graded approach addresses in their respective tiers the contexts of contact dispute prevention, resolution and enforcement.

For most of the remainder of this review, a range of jurisdictions are discussed, each in turn.

Australia

Australia, which has a federal family law and family court system in which individual states comprise separate legal jurisdictions, saw important reforms of family law in 1996 that introduced legal principles to govern post-separation parenting and the governance of child contact (Rhoades et al 1999, Rhoades and Boyd 2004). As in Scotland at about the same time, the legal concepts of custody and access were replaced by those of parental responsibility which remains shared by parents even after separation, by contact as a parental responsibility, and by the idea that post-divorce parenting should be guided by what is in the child's best interests. Determining children's views also became an important consideration and it is possible for the courts to appoint a lawyer to act for the child. Like Scotland, it is mainly mothers who become the residential parent after separation, although shared residence is not uncommon (a 1999 study by Rhoades found this arrangement in 12% of parenting agreements). And also like Scotland, contact is seen to be a right of the child, except when it is not in that child's best interests. The 1999 study of these reforms found that in 23% of applications for access, access was denied in the final court order, a higher proportion than under the previous regime. The same study found that of the new 2000 cases brought annually for access enforcement in the late 1990's (less than 10% of all contact related actions in the Family Court --Australia has a specialist family court system), only 15% went all the way, and that judges and lawyers commented that at least half of these cases were without merit.

More recently there have been further major reforms to deal with the range of issues that arise on relationship breakdown, including child contact, resulting in a highly integrated set of family and legal services. In its deliberations over the Family Law (Scotland) Bill 2005, the Justice 1 Committee met with the Standing Committee on Family and Human Services of Australia's House of Representatives. Although the relevant statutory framework in Australia is broadly similar to Scotland's, as outlined above, there is also a principle with no

counterpart in Scotland, namely shared parenting and parental agreement about future parenting. In July 2006, a new network of 15 community-based government funded Family Relationship Centres (65 are planned when the system is fully implemented) began operation as a single entry point to the family law and family support system to foster more use of private arrangements for parent-child contact (Harvie-Clark 2005). The system also includes Early Intervention Services such as family relationship counselling, education and skills training, and family violence services and Post Separation Services, including a Contact Orders Program, Children's Contact Services and Family Dispute Resolution Services (http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_Familyrelationshipcentres). An on-line information service for parents, Family Relationships Online is one tier of the information being communicated to parents (http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_Familyrelationshipsonline).

Described by the Attorney-General's Department as 'the biggest ever investment in the family system and the most significant changes to family law in 30 years,' support will be offered at all stages of relationships. The role of lawyers and courts is intended as a last resort. The development is based on the ideas that the best interests of the child remains the most important issue, that following separation, shared parental responsibility must be encouraged and children should continue to be able to spend time regularly with the parent with whom they are not living and maintain links with wider kin, like grandparents. Parents are encouraged to develop parenting plans and to try and resolve contact and residence issues privately, perhaps with the help of family services before recourse to the courts. There is also an aim to make court proceedings themselves less adversarial and less likely to exacerbate conflict.

In relation to one aspect of these reforms, a seminar hosted by CAFCASS in London in July 2006, was told about Australian research on child inclusive mediation, in contrast to child-focused mediation, where children are seen separately and their wishes fed back to parents. The research found that this form of mediation had a higher level of positive outcomes, as described by parents (61%), than for child-focused mediation, where 37% of parents reported positive outcomes, even though the child-inclusive cases were more complex and conflicted (Dyer 2006). At the same conference, it was reported that there are some child-inclusive mediation pilots operating in England, such as in Leeds and Derbyshire.

O'Connor (2002) looks at the Australian system in some detail. The remainder of this section about Australia is drawn from her work and relates to the framework in place after the 1996 reforms but preceding the 2006 reforms. They are included here, even though some of these examples may no longer be current, as examples of mechanisms that have been used in a comparable jurisdiction to address contact issues, and also to provide some background about the context into which the 2006 reforms were introduced.

Parenting plans

While the 1995 family law reforms introduced voluntary parenting plans, research found that they were rarely used by lawyers and counselors, although they were often used by mediators to assist settlement. Furthermore, the registration of parenting plans was found to be cumbersome and expensive (Rhoades et al 1999).

Court counseling

As in Scotland, the great majority of contact disputes are resolved without recourse to the courts. While only 5% of disputes about contact reach final judgment, about three quarters are resolved through court counseling and some through voluntary mediation. Court counseling is the main mechanism used in the Australian court system to resolve contact disputes and reduce litigation rates. Since it is not found in Scotland it is worth describing in some detail. Counseling was the first port of call in the Australian family court system and was available to anyone bringing an action in the family court, at any stage in the legal process up to the final judgment. Judges may also order counseling before dealing with a case. In 1995/96, about half of counseling cases were voluntary and half court-ordered. With the exception of a small proportion of in-depth appraisals (ordered by a judge in difficult cases involving child welfare), counseling cases are confidential.

Counseling can involve a mix of methods to achieve change and agreement and can include exploring alternatives to litigation, helping couples to make their own decisions, educating couples about the law and legal options, and providing dispute resolution skills. It does not involve relationship counseling (Australian Law Reform Commission 1997).

Dispute resolution rates appear to be impressive; three quarters of those who attended counseling before filing an application with the court were found to have settled at least one issue; of those who attended after the first court appearance (including court ordered cases), 60% resolved at least one issue. About 60% of all counseling cases were fully resolved without a return to court. Resolution rates decline the later in the legal process counseling begins, and are lower in child abuse and domestic violence cases. These results are all the more impressive in light of the fact that counseling clients have lower income, poorer education, higher conflict and poorer communication skills than those who use voluntary mediation. The service appears to be popular with clients and judges; counseling caseloads have risen and the service is under increasing pressure since it was introduced.

The literature surveyed did not provide a fuller picture of the court counseling system.

Voluntary mediation

In court, voluntary mediation, like court counseling, is available to anyone bringing an action in the family court, at any stage in the legal process up to the final judgment. Unlike court counseling it can only be ordered by a judge and only with the consent of the parties. The courts also work with out of court mediation services, such as the federal government's Legal Aid and Family Services. A 1997 evaluation of these services found that about 75% of cases in Sydney and Melbourne reached agreement.

Contact order compliance regime

A contact order compliance regime was introduced in 2000 to address concerns about enforcement of these orders. This consisted of a structured and graded three stage approach. Stage 1 involved giving parents information about services, their obligations and the consequences of failing to meet them. Stage 2 could require parents to attend a parenting programme or result in a change to the original order and stage 3 could involve more serious

measures such as community service, fine or imprisonment. Hunt (2005; p. 13) observes that the latter punitive approaches, while apparently rarely used, engender more conflict and don't seem to resolve the underlying problem, although evidence is limited.

Supervised or supported access; contact centres

Supervised or supported contact is increasingly used in many jurisdictions to support contact in difficult cases where unsupervised contact presents an unacceptable level of risk to a child or a residential parent, such as in families with a history of child abuse or neglect, domestic abuse, drug or alcohol abuse or poor parenting competence (Legal Studies Research Team 2003).

Supervised contact, typically at a contact centre, aims to provide a safe and neutral environment for handovers, and for a non-residential parent to spend time with their children in the presence of a disinterested third party. There are several models.

The Australia and New Zealand Association of Children's Contact Services identify three of these, with increasing degrees of monitoring:

- Low vigilance supervision, for low risk cases,
- Vigilant supervision for high conflict but where the risk of violence is low,
- Highly vigilant supervision, for high risk cases where safety is an issue; here parent child contact is closely monitored and maintaining safety is a priority.

Connor (2002) reports on an evaluation of an Australian supervised and supported contact pilot scheme which began in 1996, and which was a 10 site service that formed part of its broad family law reforms. Before the reforms, almost all fathers were awarded contact in interim orders although fewer were subsequently awarded contact in the final orders. Some of the services provided counseling and aimed to move parents from supervised to unsupervised access. The evaluation found a clear demand for the service, which was well used by its client group. The services were used for changeovers as well as visits under monitored conditions. About three quarters of referrals came from lawyers, community law centres or judges and 20% from community or social service agencies. The service was charged at a subsidized rate. The evaluation of the pilot found that about half the children said they were happy to be there and pleased to see their access parent, more so if the centre was used for changeovers than for supervised visits, and the majority of children said they felt safe. However some children remained fearful and few wanted to see their access parent outside the centre. Over time, most children's behaviour seemed to improve. While both resident parents and non-resident parents were resistant to the service at first, they came to feel more positive about it over time. The average length of use increased over the life of the project and this was thought to be due to an increasing number of parents who did not move from supervised to unsupervised access. Parents' communication and cooperation did not seem to improve. No follow up study was carried out of families who left the service.

A more recent study of children's contact services for contact or changeovers by Fehlberg and Hunter (2005) (see also Sheehan et al 2005a, Sheehan et al 2005b) carried out just before the rolling out of the programme for 65 federally funded child contact centres throughout

Australia paints a rather depressing picture of contact centres as something of a ‘black-hole’ for families: once in the system, few leave it. Referral to the services is most typically via court order, and in interviews with a range of stakeholders, it was found that most thought that supervised contact should be ordered for a defined rather than indefinite period. However, few orders specified an end point or any plans to phase out supervised contact. The authors conclude that while child contact centres have made life easier for lawyers and the courts in providing a safe means of achieving contact in high conflict or difficult cases in a pro-contact environment, there is a concern that it is used too easily and do little to reduce conflict or move families towards self-managed, unsupervised contact.

Canada

Prompted in part by pressure from the fathers’ rights movement, in 1998 a Special Joint Committee on Child Custody and Access was set up to look at contact issues (Rhoades and Boyd 2004, p. 125) both within Canada and in other jurisdictions. Its report, *For the Sake of the Children* (1998) rejected a formulaic approach to dealing with contact, recognizing the diversity of family life and arguing that individualized agreements made by parents were more likely to be in the child’s best interests. It recommended further research, and one research outcome (O’Connor 2002) provided the information for the remainder of this Canadian account. In November 2002, the final report was published, *Final Federal-Provincial-Territorial Report and Custody and Access and Child Support (Final Report)*, just before the introduction of Bill C-22 on this subject, a report and a law reform process described as much more informed by social scientific and legal research than the earlier 1998 report (Rhoades and Boyd 2004; p. 126).

O’Connor’s (2002) informative study of child access in Canada looks at mechanisms for contact dispute prevention, resolution and enforcement in Canada and other selected jurisdictions. She also observes (p. 12), along with numerous others, that ‘most separating or divorcing couples appear to resolve their access arrangements without high conflict or extensive use of the courts’. This underlines the point that most access arrangements or mechanisms are informal inasmuch as they occur ‘in the shadow of the law’ rather than by using the law directly. It is important to bear in mind that satisfactory private ordering itself is an objective of legal policy, and thought to produce outcomes that are usually more satisfactory and enduring to the parties than those that have had recourse to the courts. Thus, legal mechanisms should not only be supportive of cases that directly involve the courts, but also be supportive of others for which the law may provide no more than a normative (in contrast to an instrumental) framework for private ordering.

O’Connor describes selected legislative approaches and supports to access enforcement across jurisdictions, including Canada, Australia and Michigan. She reviews some of the legal and social science literature on unwarranted access denial and non-exercise of child access by non-custodial parents (topics beyond the scope of this review) and considers if evaluations have been undertaken about the effectiveness of programs and services and their results. In relation to the former, it observes that about 30% of divorcing American couples experience conflict for between 3 to 5 years, including conflict about access (indeed conflict about access is usually one aspect of a cluster of disputes) but the frequency declines sharply after this time. It also notes that studies indicate that about one third of non-resident parents have no contact at all after 5 years (and a further third have a regular and frequent contact).

Responsibility for access and access enforcement is spread across federal and provincial and territorial levels of government, and all are governed by the federal Divorce Act and possibly by provincial legislation. Services to support separating and divorcing couples are delivered at provincial levels, although some programmes receive federal support. O'Connor reports considerable variation across provinces and territories in their approaches towards access disputes and enforcement and there are differing and wide mixes of counseling, mediation and information, parenting plans and parenting education services available. Sanctions available to the courts for access enforcement also vary, from civil contempt in Ontario and Quebec to fines, imprisonment, and compensatory access elsewhere.

What follows is a short summary of some innovative mechanisms in Canada which O'Connor outlines.

Prevention of contact disputes and parenting plans

The aim of parenting plans is to help parents focus on their children's needs and their parental responsibilities at a time when they may be in conflict and experiencing emotional turmoil, to reduce conflict before it becomes entrenched, and prevent future disputes. They aim to help parents, by private ordering, to develop a pattern of cooperative post-separation parenting in a systematic, comprehensive and informed manner.

A Norwegian survey of contact arrangements carried out in 2004, following the introduction of new rules for child support, found that 80% of parents who live apart have a contact agreement, 43% in writing and 35% orally. The great majority of parents thought their access arrangements worked either well (70%) or fairly well (17%) (Statistics Norway 2005).

On the basis of this and other examples mentioned elsewhere in this review from the US and Australia, O'Connor concludes (p. 28) 'that for low conflict couples, parenting plans can be useful in helping them reach a child-focused agreement, but will not help, and may even cause harm, in cases where parents are in high conflict.'

Parenting education

Parenting education programmes help parents to focus on their children's needs and interests and often describe to parents how parental conflict impacts on their children. Many also provide legal information about divorce law and processes. Some are compulsory prerequisites for bringing a court action for access, although most are voluntary. As one example, in 1998, British Columbia introduced a 3 hour mandatory parenting programme for parents bringing access or custody applications to the court, because take up of the voluntary programmes was so low. Parents were initially hostile to the course, but evaluated it positively when completed. However, the few follow up studies carried out have mixed results and some suggest while these programmes may lead to improved knowledge and attitudes, they do not lead to longer term changes in parenting behaviour.

Alternative dispute resolution (ADR)

ADR mechanisms to deal with contact issues include counseling, mediation and arbitration.

Counseling

While counseling models vary, they have some common features, such as providing information about legal rules and processes, and exploring legal options and alternatives to litigation. Unlike mediation, they are not settlement focused although many disputes are resolved in the course of counseling. One thorny issue for assessing the suitability of counseling is the need to screen for domestic violence, and either to exclude such cases or to ensure that partners are seen separately.

Mediation

Mediation differs from counseling in being settlement oriented. It may be voluntary and confidential, or court-ordered with outcomes made public. The professional backgrounds and legal training of mediators also vary. Mediation is becoming more widespread in Canada. Manitoba launched a co-mediation programme in 1999 in which 150 separating parents, many with unresolved custody and access issues and reporting high conflict, attended five to eight one and one half hour sessions led jointly by lawyers and family specialists. At the end of the research period, 20 of the 30 completed cases had reached full agreement and 5 more achieved partial agreement.

Nevertheless there are persistent criticisms of mediation. One is that it only works well for couples with low to moderate levels of conflict. Another is that it is not suitable in cases of domestic abuse. The fairness and transparency of agreements has been questioned, and whether there are sufficient procedural safeguards against unequal bargaining power between the parties. Doubts have been raised about the adequacy of the skill and training of some mediators.

Ontario has pioneered a programme of short term intervention for disputes about access denial or breach of an access order. As in other mediation programmes, cases involving violence were excluded. This is a 10 hour intervention involving meeting both partners together or with the child early in the process, followed by parent-child interviews. A follow up evaluation found that nearly half of the families involved continued to have access disputes and poor cooperation, and reported that the intervention had not helped. However, others reported that the sessions had been of some use either informally or for the subsequent court action.

Mediation and arbitration in access enforcement

An access assistance project was piloted between 1989 and 1993 in Manitoba to deal with cases of non-compliance with access orders (Hunt 2005, p. 13). This involved a mixture of long term therapeutic and legal measures and decisions were based on the child's best interests. The families involved often had histories of domestic violence or alcohol abuse. The programme evaluation found that matters improved in one third of cases, 10% complied with the court order and another third were reported no improvement or were unresolved. Child outcomes and re-litigation rates were not known. The project was later abandoned because it was too costly. Hunt observes (2005, p. 14) that in cases of non-compliance with contact

orders: “expectations about the proportion of families who can be helped even by intensive interventions need to be modest.”

Supervised or supported access; contact centres

As in Australia, supervised or supported contact, usually within the setting of a contact centre, has been developed for difficult cases. In some Canadian provinces, contact centres are run as an informal service staffed by community volunteers. There is wide variation in practice as to the relationship of contact centres to other support services such as counseling or mediation. O’Connor comments that this may affect the quality of service and whether parents progress to unsupervised access. She reports on an evaluation of a supervised access project in Ontario.

Ontario launched a 14 site supervised access pilot in the early 1990s. At the end of the pilot it seemed that the service was well used, mainly by parents who had access previously but where the residential parent had stopped it on grounds of their or the child’s safety. Access to the service was mainly through referrals by the courts. The service was found to be popular with parents, children and with lawyers and judges, although there was a greater level of dissatisfaction expressed by access parents. While most use of the service was short term, e.g. to reintroduce a child and long absent parent, the longer term users were those with psychiatric or substance abuse problems or where there was a risk of abduction. Very few parents moved from supervised to unsupervised access, or reported that their relationships with the other parent improved or hostility decreased, findings replicated elsewhere. No research was found that assessed the longer term impact of supervised access on children.

O’Connor concludes that a range of similar mechanisms have been developed across a number of jurisdictions to address problems about access denial, although she comments that it is likely that failure to exercise access is more prevalent than access denial. The cases that come to the courts are at the most difficult end of the spectrum, with disproportionate levels of hostility, violence and dysfunction of various kinds. Preventative strategies include parenting agreements, counseling, mediation, parenting education but these seem to be most effective for those who need them least. For difficult access cases, the most common means of fostering access where there is a safety issue are supervised contact via contact centres.

United States

There is an extensive literature on services for separating parents in the United States, and it has only been possible within the constraints of this review to skim the surface. Hunt’s excellent Briefing (2005) reviews a number of innovative educational and mediation programmes in the United States (and elsewhere), and the evaluation evidence, some of which is summarized here; the full report is commended to the reader. O’Connor (2002) looks at some individual states, each of which comprises an independent legal jurisdiction, in relation to specific mechanisms.

Parenting plans and parenting education

As noted earlier, parenting plans have become widespread. O'Connor refers to parenting plan policies that have legislative force, such as the state of Washington's Parenting Plan Act 1987 which requires almost all separating and divorcing parents to produce one. In various studies that evaluated these parenting plans, there were some positive outcomes, such as higher levels of shared residence than previously, and greater commitment to joint decision making. However they also identified some difficulties, such as limited choice offered by the plans, that joint decision making (even when agreed) was rarely implemented in practice, and insufficient safeguards in cases involving domestic violence.

Parenting education programmes are also reported to be widespread in the United States². These programmes aim to give parents new knowledge and skills, produce attitudinal change, protect children from conflict and enhance their well-being, resolve disputes and foster non-resident parents contact. Many also provide legal information about divorce law and processes. Some are compulsory prerequisites for bringing a court action on access, although most are voluntary. There are low take up rates for the voluntary programmes (a pattern also found elsewhere), which are nonetheless positively evaluated by participants. However, Hunt (p. 3) comments that the effectiveness of most North American educational programmes has not been evaluated, and of those that have been, most have been by participant exit surveys, a method known to provide only a poor and partial picture. The small number of research evaluations of such programmes find mixed results, and small positive impacts, although researchers consider they can be useful as one of a range of services. A question on which there is debate is whether parenting education programmes should be compulsory, either for all separating parents or for high conflict couples who are litigating.

An example (Hunt 2005, p. 5) of a parenting education programme that was appreciated by the courts is the Children in the Middle programme in Ohio. It consisted of a 2 hour class for all divorcing parents that used interactive teaching strategies that aimed to reduce children's exposure to conflict by giving parents information and, crucially, developing their skills. A systematic research evaluation found positive benefits in reducing children's exposure to conflict, although no impact was found in reducing parental conflict, domestic violence or children's behavioural problems.

Mediation

Mediation is widespread in the US. O'Connor reports (p. 32) that there are over 200 court mediation programmes in the US, a third of which are mandatory, a third of which are voluntary and the remainder mixed. She reports that most research shows high agreement rates for both voluntary and mandatory mediation, with high levels of satisfaction with the process, and high levels of adherence to agreements. However some research casts doubt on the durability of agreements and finds many respondents doubted whether their spouse would honour the agreement.

A particular model of mediation, *impasse mediation*, has been used to address intractable and complex disputes. It consists of intensive therapeutic and counseling sessions with the whole

² Lehner, L.1992 "Mediation Parent Education Programs in the California Family Courts" *Family and Conciliation Courts Review*. Vol. 30, No. 2, April.

family over a number of weeks. For example, the Alameda model offered individual and group models of mediation (Hunt 2005, p. 9). In the individual model, which ran for 27 hours over 12 weeks, parents and children receive individual counseling, followed by a dispute resolution phase, with any agreement reviewed by lawyers. A more intensive version involved counseling for 3 to 5 hours per week for 2 months, with frequent phone calls, followed by 1 to 2 hours counseling per week over the next 2 to 6 months, with a follow up period of 1 to 2 hours per month and telephone counseling. The less labour-intensive group model ran for 16 hours over 8 weeks. Parents meet separately in gender mixed groups for 4 weeks, with parallel sessions for children. The parents group receives feedback from the children's group. Some parents use the final sessions to develop a parenting plan. A research evaluation of this programme found that 83% of couples had reached agreements, that 70% had kept to them 6 months later, and 44% 2 to 3 years later. However court action was subsequently taken in a substantial number of cases and children's adjustment did not improve (O'Connor p. 37). A similar pilot project in Australia produced some dispute settlement and the director of the Family Courts counseling service considered this model best for resolving difficult contact cases. Its critics argued that it was not suitable for all difficult cases, such as those where an individual has a personality disorder, where violence is involved or where the whole family cannot be gathered together.

Contact order enforcement

Moving along the continuum to the enforcement of contact orders, O'Connor looks critically at the example of Michigan, a jurisdiction in which the best interests of the child test is not paramount. The US is not a signatory to what is described as the Hague Convention on the Rights of the Child and therefore does not formally recognize the child's 'best interests' principle. Nevertheless there is a legal presumption in favour of access, "on the grounds that access almost always serves the child's best interests" (O'Connor 2002: 9, 23) unless there is clear evidence that access would endanger the child's physical, mental and emotional health. In Michigan, under the provisions of the Child Custody Act, access orders and enforcement has been since 1983 the responsibility of the Friend of the Court Bureau (originally established in 1919), which is attached to each county court. That body's decisions about access or contact are governed by criteria such as the child's age, the contact parent's track record, and the risk of violence or abuse to the child or the residential parent, but not the child's wishes. Access is seen as a right of the non-residential parent, rather than as a right of the child. The residential/custodial parent is responsible for encouraging a positive relationship between the child and its other parent. If an access parent considers that a parenting order has been violated, the Friend of the Court Bureau is charged with deciding if a non-resident parent's right of access has been violated and for enforcing the order, and may require the custodial parent to show cause for denial of access, such as if the access parent was drunk or on drugs, at the risk of penalties such as fines, compensatory access or imprisonment. The FOC has been widely criticized by both access and residential parents for many reasons, including for not routinely meeting with parents before making a decision, for its lack of accountability, for the absence of an appeal mechanism against a FOC decision and gender bias (both male and female).

Voluntary mediation is available to support dispute resolution at any stage of the process of deciding on custody and access. Court-sponsored mediation is conducted by experienced lawyers on a fee for service basis and is confidential. Cases that do not reach agreement

proceed to court. In some counties, arbitration is available in addition to or instead of voluntary mediation.

One of the most difficult and controversial issues is how to respond effectively to non-compliance with contact orders made by the courts. This issue is usually framed in relation to non-compliance by a resident parent, and little attention has been paid to non-compliance with contact arrangements by a non-resident parent, although there is evidence to suggest that this is at least as commonplace. Most responses tend to be along the lines of imposing punitive or deterrent sanctions, such as fines, imprisonment, suspending driving or other licences, community service, awarding expenses or legal costs to the other parent. Hunt notes (2005, p. 12) that there is no research on the use or effectiveness of such sanctions and that some jurisdictions (Australia, Canada, Finland, New Zealand, the US) have sought to look for alternative approaches (whose effectiveness is also under-researched). These have included clarification and review of the orders by a lawyer to ensure they have been correctly understood by the parent, rapid response by court officers, mediation and educational interventions.

One example that reflects the particular difficulties that arise when contact orders are violated is the Expedited Visitation Service in Maricopa County in Arizona which enforces access after an application claiming a violation is filed. In this jurisdiction the only permissible reason for denying access is the threat of harm to a child. Conference officers meet with the parents to try to mediate the dispute and make a public recommendation to uphold an existing agreement, to modify it, or to recommend other services such as supervised access (O'Connor 2002, p. 38). Conferences usually result in access of some kind, which is monitored for compliance for 6 months. Particularly intractable cases can be referred to a judge. These disputes typically went beyond access denial, such as those also involving child support arrears, and often involved drug abuse, domestic violence or child abuse. The evaluation of the programme found that continuing court involvement was often necessary but punitive penalties and court ordered changes were both rare and that access problems persisted after the interventions.

In the US, litigation is more common, as is the level of stress that court involvement provokes. Lamb (2005) reports that in some jurisdictions parental information courses have been introduced to explain to parents the effects of divorce on children and to offer training to minimize conflict and children's exposure to parental conflict. He comments that evaluations of this programmes suggest they are effective, at least in the short-term (Pedro-Carroll et al 2001). Another conflict-reduction strategy he identifies is to encourage professionals to ensure that parenting plans minimize ambiguity, and specify details about arrangements. Further he suggests that exchanges for contact visits should take place in neutral settings, such as contact centres or schools, to minimize opportunities for conflict. One innovation within the last 10 years has been the development in some jurisdictions (e.g. California, Oregon, Colorado) of parenting coordinators, whose introduction is reported to be associated with sharply reduced litigation rates (Coates et al 2004, AFCC Task Force on Parenting Coordination 2003, Sullivan, MJ 2004). Parenting coordinators attempt to contain conflict and encourage parents to make joint decisions in the child's interest.

Sweden

The Swedish system governing contact operates with a graded mix of private ordering, social services and family courts. The norm in the Swedish family law framework is for both parents to have automatic joint custody of (i.e. legal responsibility for) their child, if they are married, and this normally remains so even after separation when the child might live with only one parent who has the actual, day to day, care of the child. The Swedish legal concept of joint custody seems to parallel the Scottish legal concept of continuing joint parental responsibilities and rights. The legal system explicitly encourages agreement and cooperation between separated parents in relation to custody, residence and access, and courts are explicitly required to encourage parents to reach an agreement that is in the best interests of the child.

Child contact is seen primarily as a child welfare issue, and there is no specialist family court within the Swedish legal system, as is also the case in Norway and Finland but unlike England and Wales and Australia (Ryrstedt 2005). The Swedish mechanisms that govern child custody, residence and access appear to be a model of parental cooperation, supported and facilitated by local social services first, followed by court intervention afterwards if necessary. The central local social service institution is referred to in the English language literature consulted for this review as either social service committees or social welfare committees (socialnamnden). There is a social welfare committee in each municipality with a broad remit for social welfare services in that community, and child welfare in particular, and its responsible for “promoting the pre-conditions for good living conditions and responsibility for care, service, information, advice, support and care, financial assistance and other support to families and individuals who need it. The committee has special tasks as regards care of children and young people, and shall work to ensure that children and young people grow up in secure and good circumstances” (Ministry of Justice, Sweden 1998: 54).

Recent reform in 2006 of the law relating to custody and access is set out in the Children and Parents Code. At its centre are the 2 principles of the best interests of the child as the determining consideration and the right of children to be heard. In deciding what is in the child’s best interests, regard must be given to the risk of any harm to a child or another family member, e.g. from abuse and to the child’s wishes. The law reform emphasizes that in making decisions about contact, courts and social services committees must take a child-centred approach and be able to account for their decision in each case.

If parents are not married to each other when a child is born, the mother automatically has sole custody of the child. Unmarried parents can obtain joint custody if they marry or if both notify in writing the local social welfare committee, acknowledging paternity at the same time. If paternity is acknowledged and both parents are Swedish citizens, then joint custody can also be obtained by notifying the tax authority or a social insurance office in writing.

The concept of custody seems similar to that of parental responsibility in the context of the Children (Scotland) Act 1995, except, as amended by the Family Law (Scotland) Act 2006, in relation to automatic parental responsibility and rights for unmarried fathers who register the birth. It is a child’s right to have contact with a non-resident parent. When parents separate, they are encouraged to agree about residence and contact themselves, and to record the arrangement in a written agreement which a municipally-based social welfare committee is then asked to approve as being in the best interests of the child. That agreement then becomes legally binding. There is a presumption that a child needs a good and close relationship with both of its parents, and a further presumption that neither parent is better suited to be the

residential parent by virtue of gender. In determining custody and contact, the child's wishes must be taken into account if s/he is of sufficient age and maturity. If the non-residential parent lives some distance away and must incur expense to have contact, the residential parent is expected to assist with travel expenses to an extent they can afford.

If parents cannot agree, they may apply to the court for a decision, also based on the best interests of the child. However, before this happens, a cooperation discussion, or as Bjornberg (2002) and Ryrstedt (2005) translates it, a 'cooperation talk' (samarbetssamtal) may be held between the parents with an expert present to facilitate discussion. All municipalities offer cooperation discussions, which are free of charge. These talks are with parents (but not children), are led by a mediator (usually a social worker), extend over 2 to 3 sessions over as many months, and are organized by a Family Rights Unit. Bjornberg reports that about one quarter of separating parents make use of this service and that mediators are not keen to include children because they have a protective attitude that children should be spared the burden of their parents' disputes. Ryrstedt (2005) is highly critical of the lack of child focus in Swedish practice, and of not involving children or giving them an opportunity to express their views.

Before any court decision, the local social welfare committee must be given the chance to provide information on the case following talks with the child and its parents. The social welfare committee can give advice and support or appoint someone to assist a family with a contact dispute, with their agreement. Legal aid to draw up an agreement can be obtained by application to the municipality.

If a parent has failed to observe the provisions of a contact agreement, an application may be made for enforcement to the county administrative court. Access enforcement decisions are normally dealt with by the same court that made the original access decision, and any decision will take account of any risk to the child and of the child's wishes. The court cannot order contact enforcement if that is opposed by a child who is 12 years old or more or has reached a degree of maturity so that its wishes should be taken into account, except if the court considers that contact is in the best interests of the child. The court can refuse to enforce contact if it considers there is a risk of physical or psychological harm to the child.

New Zealand

The legal framework in the New Zealand family court system that governs residence and contact is the Care of Children Act 2004 which came into force in 2005. It is broadly similar in its scope and provisions to the Children (Scotland) Act 1995, with an emphasis on children's rights, the need to consult children about decisions that affect them, more emphasis on parental responsibilities than rights, and ongoing joint parental responsibility after separation (Family Court of New Zealand n.d.). The welfare of the child is paramount and children are entitled to have independent legal representation. Following separation, one or both parents may have day to day care (replacing the legal concept of custody) and a parent without day to day care is encouraged to have contact (replacing the legal concept of access). Parenting orders have replaced custody and access orders. There is an emphasis on parents cooperating with each other in matters relating to their children, and in reaching agreement about the care of their children (possibly recorded in a parenting agreement or confirmed in a court order). But if parents cannot agree, the Family Court can intervene. First the court arranges for counseling by a professional counselor that is free and confidential. If parents

cannot reach agreement in counseling, then either one can apply to the court for a parenting order. The court will then usually arrange for a mediation conference to see if parents can agree an arrangement. The last stage is a formal court hearing; parenting orders are seen as a last resort, to be used only if other approaches to achieve agreement have failed. As in Scotland, the child's welfare and best interests is the most important criterion in the court's decision-making about a parenting order. It may draw on expert advice from a psychologist or from Child, Youth and Family Services.

If a parenting order is not observed by a parent, the court usually refers both parents to counseling to try to reach a solution. Failing that, the court may make orders, such as changing the amount of contact time or ordering a parent to pay a sum as bond. Supervised contact is also a possibility. Legal aid is available for parties of limited means who need a lawyer.

France

With a population of 58 million, France had 279,00 marriages and 125,00 divorces in 1996, i.e. a ratio of divorces to marriages of 45%. Over two million children do not live with both parents and of these, 85% live with their mothers. Bastart* (2003) estimates that only one half of those children see their fathers regularly, at least once a month and one third of them never see their fathers. Joint custody was introduced in 1987 (comparable to the presumption of continuing parental responsibilities and rights following separation). Mediation was introduced into the French code of civil procedure in 1996 and it has been further integrated since into the civil code governing divorce and family matters. When a divorce action is raised, a civil judge meets each of the parties separately and without their lawyers at least once, emphasizing the benefits of reaching agreement with regard to the children. The judge might also meet with the children. The focus on achieving agreement is shared by lawyers. In parallel with these changes, he describes a shift in orientation of the French judiciary in family actions, towards a more pro-active approach that supports the development of new services, such as contact centres and mediation.

Contact centres have been extensively developed since the late 1980s in France as a means of facilitating contact in difficult cases. They have been researched by Benoit Bastart* (Paris) and Laura Cardia-Voneche (Geneva). Contact centres developed in a 'bottom up' direction, as a number of independent local projects as not for profit voluntary organisations. From these early experiments, contact centres came to be seen as 'neutral' spaces with support available for parents and children. Although they are diverse in the services and orientations, they are used either as neutral drop off/pick up locations so that parents need not meet for contact visits, or as spaces in which contact with a non-residential parent can take place. However, visits are supported rather than supervised by professionals. They do not provide information or reports to the courts, nor do they offer counseling or other services to parents (though some are connected to mediation services), but rather promote an ethos of self-regulation.

In 2000, there were between 100 and 120 contact centres (*lieux d'accueil pour l'exercice des droits de visite*), throughout France, many of which are associated to the *Federation des lieux d'accueil pour l'exercice des droits de visite*, established in 1994. The Federation adopted standards and guidelines in 1998, one of which was that the services should be staffed by professionals, and in 2002 changed its name to *la Fédération Française des Espaces-Rencontre pour le Maintien des Relations Enfants-Parents* (<http://www.espaces-rencontre->

enfants-parents.org/pro/index.php). They are run by professionals, who may be social workers, psychologists, family counselors or therapists, normally employed elsewhere but giving their time to the centres. About half of the centres ask for modest payment from clients, although they state that money should not prevent people from using the service. Most of the funding is from public sources, both national and local, with resources scarce and hard to access. In 80% of cases, referrals are by a judge.

Bastart* (2007) observes that law reforms in many countries embody the idea that both parents should maintain contact with their children after separation or divorce, and that this idea underpins contact centres, which have developed quickly across Europe. In his view, contact centres represent a new institution in the area of family law and a 'hybrid intervention' of coercion and self-regulation of families, and embody different and possibly conflicting objectives of supporting the dissolution of the parents' partnership at the same time as maintaining the relationship between the child and the non-resident parent (2003: 271).

Denmark

It was only possible to collect limited information about Denmark in the time available. In Denmark, divorce is dealt with as an administrative matter. In the Danish family law system there are 3 types of measures that aim to support children and parents in relation to child custody and/or contact (Stine Jorgensen, Law School, University of Copenhagen, personal communication).

1) The Regional Government administration (which deals with decisions in regard to child custody and contact) is obliged to offer free counselling to parents who have a disagreement over custody or contact (Act on child custody and contact§ 29. Unfortunately this Act is not translated into English). The counsellor is a person with expertise in children's cases, a psychologist, a child welfare worker or a psychiatrist. Counselling is confidential. If only one parent agrees to counselling, then only this parent participates. This means that no parent is compelled into counselling.

2) Mediation is offered to parents who disagree about custody or contact. Both parents must agree and be prepared to work for a solution. Mediation is free of charge. There are 2 mediators present in a mediation session, one lawyer and one person with experience in child cases. The mediators do not know the parents or their problems in advance. Mediation is not an option if there is a pending case before the regional government, but can be organized quickly and as a rule completed in one or 2 sessions.

3) The third measure is directed to children with parents who live apart. The Regional Government Administration organises meetings for such children, the purpose of which are for children to meet other children of the same age and with similar problems. Counsellors with experience in child cases attend the meetings. The main target group is children between the ages of 10 and 14. A group will typically meet 6-8 times.

England and Wales

This review provides only limited and selective information about Scotland's adjacent legal jurisdiction since it was originally written for an audience of policy makers familiar with developments south of the border. At the time of writing, responsibility for family justice (and child contact) rests with the Ministry of Justice, whose website describes their work on child contact as follows.

“When contact disputes are handled badly, children can suffer. We are developing measures to improve information and advice to parents, promote alternative ways to resolve disputes, such as in-court conciliation, and mediation. We also aim to give the courts more flexible powers in contact cases through the Children and Adoption Act 2006.” (Ministry of Justice 2007, <http://www.justice.gov.uk/whatwedo/relationship-breakdown.htm>)

It has produced information website pages for parents, such as *Relationship breakdown and your children*, (Ministry of Justice 2007), with short advice tips, a link to a website for children (*It's not your fault*), links to information and useful contacts and a link to download a parenting plan publication.

In England and Wales, as is also likely in Scotland and elsewhere, the great majority of families involved in parental divorce, affecting an estimated 150,000 children a year, plus an unknown number of others whose cohabiting relationships break down, make their own arrangements for residence and contact without recourse to the courts (Office for National Statistics 2003). It is thought that no more than 10% of such cases are seen in the courts. The relevant statutory provision is contained in section 8 of the Children Act 1989 (known as section 8 orders), and the number of section 8 applications has increased annually since 1991 when the Act came into force (e.g. in 2000, 54,832 applications resulted in 46,070 orders (Trinder 2003: 388).

The statutory framework has been recently augmented in Part I of the Children and Adoption Act 2006, the result of extensive consultation, including the 2004 Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities*, the 2005 White Paper *Parental Separation: Children's Needs and Parents' Responsibilities: Next Steps* and scrutiny in 2005 of a draft bill by the Joint Committee on the Draft Children (Contact) and Adoption Bill (Ministry of Justice 2006). The Act gives the court powers to promote contact and enforce section 8 orders, for example, by making contact activity directions or contact activity conditions, both associated with a contact order, to require a parent to take part in activities such as programmes, classes, counseling or guidance sessions to promote child contact.

There are no explicit guidelines or norms about contact, although parenting plans that give parents information and advice were introduced as one element of the information provisions of the Family Law Act 1996. Hunt (2005) comments that there hasn't been any evaluation or research to assess their value, although anecdotal evidence suggests that practitioners have found them a useful framework for working with parents. Revised templates of parenting plans were issued for consultation in 2004, which gave examples of contact arrangements that were considered to work well, as a starting point for parents' own decision-making, but without prescriptive guidance of what might be 'standard' contact, (Hunt 2005; p. 7). Most recently, the Department for Education and Skills has published a framework parenting plan *Putting your children first: A guide for separating parents* (DfES 2006).

In common with other jurisdictions, contact centres have been available since the 1980s,

mainly through the voluntary sector, as neutral spaces in which to facilitate safe contact. Hunt and Roberts (2004, p. 9) report that in 2004, there were over 500 contact centres in England and Wales, over half of which were affiliated to the National Association of Child Contact Centres (<http://www.naccc.org.uk/cms/index.php>) which now support 325 centres in England, Wales and Northern Ireland. They observe that, while it was estimated that these centres were used by more than 2000 children per week, provision was uneven and funding unreliable, although government funding for their development was coming on stream. Most centres provide ‘supported’ contact, and about one in 8, ‘supervised’ contact. A small minority also provide other services for families, such as counselling, mediation and play therapy. Most families are referred to a contact centre by the courts and are likely to have experienced high conflict previously. Hunt and Roberts conclude that “Contact centres are not a panacea but part of what needs to be a spectrum of services.”

Since 2001, a key agency providing support to family courts in contact cases is the Children and Family Court Advisory and Support Service (CAFCASS: <http://www.cafcass.gov.uk/>) which represent children’s interests in family courts and provide child welfare reports to the courts (nearly 24,000 in 2006-07). Their Family Court Advisors work with separating parents to resolve disputes before going to court and they report that a majority of their interventions achieved at least some agreement (CAFCASS 2007).

An interesting study of disputed contact cases in the courts was carried out in 2001 by Buchanan and Hunt (2003). To set the context, in contact dispute cases that go to court, the judge can order a welfare report to assist its decision-making. Since 2001, such reports are provided by a Child and Family Reporter from CAFCASS. (Children and Family Courts Advice and Support Service). Buchanan and Hunt’s study of families who were subject to a report before the creation of CAFCASS is based on interviews with 100 parents (52 mothers, 48 fathers, 73 families), with most parents re-interviewed a year later, and 30 children interviewed also at that time. Data was also collected from standardized tests and from the writers of a sample of the reports. A key finding is the very high level of dissatisfaction with the court process, 60% of parents (mothers and fathers in equal degree) were wholly negative for reasons that included delays and inefficiency, the appropriateness of the process, the attitude and poor understanding of the judge, and lack of judicial continuity. Most dissatisfied and traumatized were the parents whose cases went to a full hearing. Against this damning backdrop, welfare reports did not come out as badly, with most parents having some positive reflections about them. However, they were critical of the quality and thoroughness of the enquiry, commenting that children should be routinely interviewed and home visits the norm. Mothers who had experienced domestic violence were the most negative about these. However, the authors comment that satisfaction levels were associated with outcomes, and therefore question if a change in practice would increase user satisfaction. About half of the children who were interviewed saw contact as an ongoing source of conflict between their parents, with an emotional cost to themselves. Improvements suggested by the children interviewed included that Family Court Welfare Officers could be more skilful in communicating with children and better at understanding their wishes.

Buchanan and Hunt conclude (2003, p. 379):

“Change . . . , has to be more far-reaching than addressing deficiencies in the courts and related services. . . Rather the approach has to incorporate, as with many social or health problems, a comprehensive ‘preventative’ strategy. . . . Prevention is generally held to have three tiers: primary, secondary and

tertiary. Primary prevention is about providing services to all with the objective of reducing the overall prevalence of a particular health hazard. Education is normally a key element. In this context, the focus would be a strategy aimed at shaping the culture about post-divorce parenting so that there is a public expectation that unless there are contraindications (such as domestic violence or child abuse) child will retain meaningful contact with both parents . . . A more targeted form of primary prevention, focusing on separating families, would include the provision of information, advice and assistance. Secondary prevention would cover families where parents have begun to experience difficulties over contact and include a range of readily accessible therapeutic interventions for both parents and children, as well as mediation and legal advice. The aim of tertiary prevention would be to provide more effective help to the very troubled families who reach the courts, and prevent them returning to court again and again. . . . Our research findings therefore chime with the general tenor of government policy to keep cases out of the courts where possible [and] . . . a more therapeutic, less forensic approach to contact disputes. . . . We would like to see more attention paid to the question of how to reduce the proportion of non-resident parents who 'drop out' of their children's lives."

Reflecting upon the frequency of safety concerns voiced by resident parents and describing 2 contact enforcement programmes, the Department of Constitutional Affairs [now the Ministry of Justice] Stakeholder Group on the Facilitation and Enforcement of Contact (DCA 2003) echoes the prevention theme, commenting that where there are allegations of abuse, any action to enforce contact should be preceded by a risk assessment. Section 7 of the Children and Adoption Act 2006 states that where it is suspected that a child may be at risk of harm, a risk assessment must be provided to the court.

Dyer reports (2006) that many contact disputes in England and Wales are resolved by in-court conciliation. This typically entails a single, settlement-focused, session involving both parents but not children within the court and which is oriented to getting parents to agree a parenting timetable. Research by Trinder and colleagues (2002) found high rates of agreement, in about 3 out of 4 cases, but no improvement in the quality of the parental relationship, which is the most important predictor of positive outcomes for children. Assessments by both parents of children's well-being found children still highly distressed (Lamb 2005, personal communication with Mavis Maclean).

In an attempt to support highly conflicted families and some of the concerns of the fathers rights movement, a *Family Resolutions Pilot Project* began in late 2004 in 3 areas of England. This is an innovative court-based intervention to help parents manage conflict and develop more cooperative post-separation parenting (Maclean 2005, Trinder et al 2006). It has 3 stages. Parents who have raised a contact action in the court are advised to attend by a judge dealing with their case. In the first session parents view a video about the effects of conflict on children, which is followed by a discussion. The second session sees parents separately and focuses on managing conflict. The final session involves both parents and a CAF/CASS adviser who plan post-separation parenting, drawing on effective arrangements that have worked for other families.

Dyer (2006) reports briefly on an evaluation study of the pilot project. This involved 62 couples (out of an expected 1000) and cost £300,000 (just under £5k each). Of these, only

half completed the course. Those who completed it were more likely to report that the parental relationship had improved than those attending other services.

Little evidence exists as to routine outcomes achieved by private ordering or indeed, in the courts (Office for National Statistics 2003). While it is often assumed that cases that do not involve the courts are less conflicted than those that do, it is largely unexamined how great their conflict levels are. Hunt is conducting a study in collaboration with One Parent Families on cases that do not go to court. Early findings suggest that, contrary to the belief that conflict levels are lower in non-court cases, there are surprisingly high levels of conflict and distress in these cases too.

Conclusion

This small-scale literature review presents mechanisms for dealing with contact issues across jurisdictions, both those associated with the courts and those independent of the courts, across a range of jurisdictions that have significant similarities to Scotland. Those similarities include the fact that the great majority of child contact arrangements following parental separation are reached through private ordering and mutual agreement between parents, with little involvement of social agencies or courts, and family law provides a normative framework for these arrangements, as well as the more visible normative and instrumental framework for cases that involve professionals or the courts. Almost all of these jurisdictions regard the best interests of the child as the paramount consideration for the court in making decisions about child contact. The jurisdictions surveyed are England and Wales, France, Sweden, Denmark, Australia, Canada, some US states, and New Zealand. The mechanisms examined have a variety of purposes along a continuum of contact dispute prevention, resolution and enforcement. They encompass advice, information and education (including parenting plans or parenting agreements, parenting education), legislative, court-based and civil law mechanisms, and relationship support and social welfare support and service mechanisms, both those linked to the courts and independent of them.

Much of the literature that discusses mechanisms for dealing with child contact issues also questions whether and in what circumstances contact with a non-resident parent is good for children, rather than presuming that it is. This contrasts with the predominant legal presumption that contact is good for children and an objective of family law is to enable contact to take place. Throughout the literature reviewed, the value of research evidence for policy formulation is stressed, and for this highly controversial area of family law in particular, the need to ground policy in solid evidence is repeatedly emphasised as a means of assessing claims by various stakeholder groups.

While the jurisdictions examined use a wide variety of mechanisms and models for addressing contact issues, with varying levels of integration and coordination of services, there are some commonly recurring threads. Two, noted earlier, are the ubiquity of private ordering and the best interests of the child test. Another is that many of the individual jurisdictions have a mix of mechanisms that span legal, social and family services in addressing residence and contact issues following separation. It was relatively rare to encounter systematic and robust research evaluations of the services under review and much of the literature was of a descriptive rather than analytic nature.

A typical model for jurisdictions that have reformed their approaches to dealing with child contact in recent years is a graded and mixed approach, almost pyramid-like, ordered by the level of conflict being addressed. This combines information, advice and private ordering at the first tier to support parents in making arrangements, followed by a mix of social services and family support services to address disputes or the need to change arrangements to reflect children's or parents changing needs and availability, backed up by legal and court interventions for the more intractable, conflicted or complex cases such as cases involving violence, child neglect, breaches of contact agreements or orders or denial of contact. The courts themselves were either specialist family courts, or generalist courts in which family actions are heard and specialist services are sometimes available for high conflict, intractable litigated cases.

Remarkably lacking in the literature surveyed are any practical measures to address the failure to meet the parental responsibility of maintaining contact by the sizeable minority of non-residential parents who lose contact altogether, even where the child concerned positively desires contact and this would be in the child's best interests.

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