

## **Families Need Fathers response to ‘Outcomes of applications to court for contact orders after parental separation or divorce’**

Families Need Fathers (FNF) welcome the research undertaken by Joan Hunt and Alison Macleod<sup>1</sup> from the University of Oxford (<http://www.justice.gov.uk/publications/outcomes-contact-orders.htm>).

This study highlights and emphasises the importance of our charity’s primary objective, which is to ensure that children remain in a relationship with both parents after separation or divorce when there are no proven welfare reasons to preclude this.

However, we are disappointed to find that this study has been misinterpreted in some media reports and that many of the key points which have emerged have been ignored.

Despite some helpful findings from this study we believe that more research is still needed. Most importantly, we need follow-up studies. We need to assess the length of agreements reached and the nature of them and we need to research why people give up on the legal process or avoid court entirely, preferring to lose their relationship as parents.

FNF therefore call upon the Government to:

- Undertake additional research into the above issues
- Continue with their efforts to help address critical contact issues in order to ensure that children are fully supported in maintaining an ongoing relationship with both their parents and their extended families following family breakdown
- Allocate greater resources to Early Intervention for families experiencing separation or divorce.

The following issues have been made clear:

### **More services need to be available to separating families.**

The report firstly determined that “*Outcomes were typically agreed.*”<sup>2</sup>

This supports our view that more services should be available for parents before the court process, with all its costs and difficulties. Currently less than 1 in 10 parents seek the assistance of family courts; however, this could be

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<sup>1</sup> Oxford Centre for Family Law and Policy Department of Social Policy and Social Work, University Oxford

<sup>2</sup> Joan Hunt and Alison Macleod, Outcomes of applications to court for contact orders after parental separation or divorce, Briefing note, Oxford Centre for Family Law and Policy Department of Social Policy and Social Work, University Oxford September 2008

further reduced by making more services available for separating parents and their children.

### **More research is needed into why non-resident parents are withdrawing from court proceedings.**

In some cases applicants “*withdrew from proceedings*”<sup>2</sup>.

More research is essential to understand the reason for this. FNF believe that the reason for non-resident parents curtailing court involvement is the difficulties surrounding lengthy and expensive court processes. Some of these parents simply cannot carry on their cases owing to

- mounting court costs and other debts
- coping with the anguish of unproven allegations made against them, or
- simply because they feel the process is biased against them.

In reality, the court process is obstructing the development of relationships between children and their parents.

### **Weekend dads and mums, is this fair?**

*“Contact typically involved overnight stays, at least fortnightly, with some children having additional midweek visiting contact. Visiting contact was usually weekly or more and was almost always unsupervised.”*<sup>3</sup>

We are encouraged by this finding, a vast improvement from over 34 years ago when the charity was founded. However many children are not happy with ‘weekend dads or mums’ and often want more engagement with the ‘other’ parent. Research proves that most children:

- “want and value contact;
- view the ‘non-resident’ parent (NRP) as an important figure who is still part of the family, and find the loss of contact painful;
- miss the NRP and many would like to see more of them;
- value the effort and commitment of their NRP in making a family life for them.
- and would like to be actively involved in maintaining contact.”<sup>4</sup>

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<sup>3</sup> Joan Hunt and Alison Macleod, Outcomes of applications to court for contact orders after parental separation or divorce, Briefing note, Oxford Centre for Family Law and Policy Department of Social Policy and Social Work, University Oxford September 2008

<sup>4</sup> Pressdee et al op cit, J Owusu-Bempah (1997) Information about the Absent Parent as a factor in the well-being of children International Social Work 38 pp 235-275 and Dr Bren Neale, Professor Carol Smart, Dr Amanda Wade 1999 New Childhoods? Children and Co-Parenting After Divorce

Many “non-resident” parents are not happy with this level of parenting time.

In addition, more support and research is desperately needed to understand and effectively deal with cases of *“implacable hostility”*, particularly in cases when the resident parent, and often the affected children (who may well be mimicking the words of that parent) are completely resistant to contact with the ‘non-resident’ parent for unsubstantiated and unproven reasons.

### **Children should not be caught in the middle.**

The report confirmed that *“non-resident parents were largely successful in getting direct contact where there had previously been none at all, and in getting the type of contact sought”<sup>2</sup>. “Non-resident’ parents were almost twice as likely to succeed in getting the type of contact they wanted as resident parents who initially opposed staying, unsupervised contact or any contact.”<sup>3</sup>*

We believe that more parent-focused education is required to demonstrate the importance of two parents in a child’s life to prevent children being caught in the middle of feuding parents.

### **More needs to be done to enforce orders.**

*“Those who achieved staying contact usually got the amount they sought, those with visiting contact mainly did not. Applications to enforce previous orders were unusual and rarely wholly successful.”<sup>2</sup>*

This finding does not come as a surprise and is of greatest concern to FNF. We are encouraged by the amendments to the Children Act, which will go further in trying to better support and ensure that ‘contact’, as defined in Contact Orders, actually happens. Although we are encouraged by these steps, we are still not convinced that this will alleviate the problem. In many cases parents do not return to court to enforce broken contact orders because they consider the likelihood of a successful court action as minimal. It is generally understood by the public that courts are unwilling to enforce contact orders.

A fundamental weakness of this report is that there is no confirmation as to whether the contact between children and their “non-resident parents” as ordered by the Courts is actually happening. This, and not the awarding of contact orders, is in reality is the critical endpoint.

### **Children’s welfare is of paramount importance.**

*“Four in five resident parents who opposed unsupervised contact raised serious welfare concerns. The initial position of the resident parent and whether they raised serious welfare issues were significantly related to outcome, as was the age of the child, whether there was any contact at the*

*point the application was made and the interval since the child was last seen.”<sup>2</sup>*

These findings have serious long-term implications. More support for ‘non-resident’ parents is required, and a serious review is needed into genuine and proven child welfare issues. More must be done to prevent unproven or false allegations against ‘non-resident’ parents, which can have highly damaging outcomes on both child and parent. False allegations inevitably detract from the serious cases, where child welfare is a real and genuine issue.

### **More is needed to prevent unfairness.**

*“There was no evidence that non-resident parents as a group are systematically unreasonably treated by the family courts. On the contrary, the study shows that the courts start from the position that contact is generally in the interests of the child, they make great efforts to achieve this and in most instances they are successful. In a small minority of cases, however, it might be argued that the outcome was unfair to the non-resident parent”<sup>2</sup>.*

Although FNF is encouraged by these findings, even in this limited study Oxford researchers found that people are still being treated unfairly and children are being let down by family courts as their ongoing relationship with both parents is not being protected.

FNF provided 200,000 services last year, many to individuals that had been treated unfairly. More has to be done to prevent this, particularly in the light of the report’s finding that:

*“...the residential parent who had care of the child - started from a position of strength. The main obstacle to parents winning contact was usually the “resistance” of the parent with care of the child, not the courts.”<sup>5</sup>*

If the Courts do not take the responsibility of effectively addressing the behaviour of the resisting parent, then they are failing in their public duty to achieve the best outcomes for the affected children.

### **The four factors which prevent contact:**

In the conclusion of the report, one of the most useful sections is the analysis of the factors associated with whether there was any contact and the type of contact achieved:

*“Four factors proved to have a statistically significant association with the outcome of the proceedings in terms of whether there was to be any contact*

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<sup>5</sup> Joan Hunt and Alison Macleod, Outcomes of applications to court for contact orders after parental separation or divorce, Oxford Centre for Family Law and Policy Department of Social Policy and Social Work, University Oxford September 2008

*at all and if so of what type: whether the resident parent had raised serious welfare concerns; whether the resident parent was opposing contact at the start of the case' whether face-to-face contact was taking place at the start of the case and the age of the index child at the end of the proceedings."*<sup>5</sup>

We urge the Government to recognise the critical importance of these factors and to take appropriate steps to address the bias that they cause in preventing child contact with the affected NRP, as a matter of urgency.

### **Conclusion: Is being a 'non-resident' parent fair?**

In conclusion, one of our biggest concerns is the inconsistencies between contact orders made by Family Courts across the country. It is FNF's opinion that a complete insight into unfairness of the family courts is not achieved by a study of five family proceedings courts and six county courts. All court judgements should, whilst protecting privacy, be made public and analysed for consistency through further research. We also call for more research to look at who did not use the courts or abandoned their cases during the process.

We understand that, owing to the design of the study, interviews were carried out with solicitors, Cafcass officers, magistrates, legal advisors, district judges and circuit judges, however not with the third sector or service users. These additional experiences would be a valuable part of any future research.

The report did recognise a key concern for FNF in that "*One of the arguments behind the pressure from groups representing 'non-resident' parents is that it is not enough simply to get contact, it needs to be sufficient to enable them to play a substantial part in a child's life.*"<sup>5</sup>

FNF welcomes the discussion surrounding "*Making the court process more effective*" and supports the report's conclusions wholeheartedly. In particular "*The length of proceedings is a critical issue*"; and "*Non-compliance with court orders...It will be important to monitor implementation of the new provisions to see if they make a difference*"<sup>6</sup>.

The research acknowledged the "pivotal" role of Cafcass. The Government must make sure that it is properly funded and resourced so that this organisation is effective in its work supporting parents.

FNF strongly believes in a presumption of shared care, so although the research into the "*outcomes of applications to court for contact orders after separation or divorce*" is very useful, the report perhaps misses an important point. The labelling of parents as either the 'resident' or 'non-resident' parent are in effect inappropriate terms to use, particularly when trying to engage parents to work together in the best interests of their children

If the general consensus among those interviewed feel that courts operate on the principle that contact should generally be promoted, why is there not a presumption of shared care, which would be in the best interest of the child?

Surely, this would go some way to removing most unfairness in family proceedings. Also, as the report suggests “*it might have an impact on the attitude of resident parents*”<sup>5</sup>. This option certainly needs to be explored further.

FNF also support the report finding that a “*public education programme*” is needed, at the very least. Indeed it is a challenging task and it is one that the Government must address as a matter of urgency.