A RESPONSE FROM THE BRITISH ACADEMY TO 'CO-OPERATIVE PARENTING FOLLOWING FAMILY SEPARATION: PROPOSED LEGISLATION ON THE INVOLVEMENT OF BOTH PARENTS IN A CHILD'S LIFE'

Introduction

1. The British Academy is pleased to be able to submit evidence to the Government's consultation 'Co-operative parenting following family separation'. It is submitting this paper alongside the formal consultation response form, in order to set out the evidence in as full a way as possible.

2. In 2010, the British Academy's Policy Centre published *Social science and family policies,* which examined such areas as family structure, break-up and child care, and demonstrated how high quality social science research can support the making of family policy.[1] This consultation response is underpinned by the same reasoning: that rigorous academic evidence can and should guide decision-makers in the field of family policy. In this instance the British Academy is particularly grateful to Fellows from its law section for their effort in collating and drafting this response, which is confined to the issue of co-operative parenting.

3. This response sets out the evidence about levels of contact between parents and children and its effects; the international legal experience; and drawing on these two sections, the implications that each for the four clause options might have in practice. If the major policy drive behind this consultation is to prevent children losing contact with a parent, then none of the four proposals will have an effect on the larger number of non-resident parents who lose contact with their children without litigation occurring. However, the first three proposed clauses (reproduced here in paragraphs 29, 37 and 41) could cause harm to some children.

Summary

4. *Background:* The Government's consultation paper explains that legislation is intended to explicitly state the important role that both parents can play in a child's life. However, in 2011, the Family Justice Review warned that any legislation introduced might undermine the central principle of the Children Act 1989, that the welfare of the child is paramount.

[1] *Social science and family policies* is available to download at http://www.britac.ac.uk/policy/Social-science-family-policies.cfm

5. *Loss of contact between children and fathers:* About one-third of children either lose contact or have severely diminished contact with the non-residential parent, but evidence suggests the causes are social and the form of the law may have little consequence. There is no evidence to support the belief that introduction of the proposed legislation will affect the behaviour of those fathers who lose or greatly diminish their contact with their children after separation.

6. *Greater intensity of contact when exercised:* There is, however, evidence that the proportion of non-residential parents exercising contact may be increasing, and that when contact is exercised, it is done so more intensely.

7. *Effects of contact and absence of contact between children and a non-resident parent:* There is firm evidence that, in general, children do better when raised by two parents than by one. However, such generalisations need to be qualified e.g. by moderating factors such as a parent's anti-social behaviour, or by level of conflict between parents.

8. *International experience*: Useful evidence can be drawn from experiences in the United States (Wisconsin), Sweden and Denmark, and Australia. In particular, the Australian legislation resulted in a marked increased in judicially imposed shared time, despite evidence that rigid shared care arrangements in high conflict cases are associated with harmful effects on children, and that parents seem to believe that the legislation means they need to agree to shared care whether or not they have concerns about the safety of ongoing contact for the child.

9. *The options*: The consultation paper suggests four possible clauses for legislation, which this response comments on thoroughly. There is evidence that any of the first three could cause real harm if implemented in their current wording. The best is option four, which could be strengthened.

10. *General comment:* It is notable that the Consultation Document does not provide an option favouring no legislative change although that was the recommendation of the Family Justice Review. In addition, as any enacted proposal would only apply to a minority of cases, none of them would have any effect on the larger number of non-resident parents who lose contact with their children without any litigation occurring.

11. If the policy objective of the government is to reduce the overall extent to which children lose contact with a non-residential parent, it is surprising that it has not considered introducing a mechanism whereby non-residential parents might be placed under a duty to interact with their children. The only policy initiative that directly addresses that problem is found in the new approach to child maintenance.

Background

12. In its Interim Report, the Family Justice Review 'drawing on international and other evidence' recommended that 'no legislation should be introduced that creates or risks creating the perception that there is a parental right to substantially shared or equal time for both parents' (Ministry of Justice 2011a, para 108). The Review Panel confirmed this view in its Final Report, saying: 'Having thoroughly reconsidered the evidence', it remained firm in its view that 'any legislation that might risk creating an impression of a parental "right" to any particular amount of time with a child would undermine the central principle of the Children Act 1989 that the welfare of the child is paramount', and that it also believed that 'legislation is a poor instrument for social change in this area' (Ministry of Justice 2011b, para 4.27).

13. The Government, however, now takes a different view. It explained (Consultation Paper 2012, para 3.1) that legislation to promote shared parenting was needed because '(while) the benefit of ongoing involvement with both parents is already factored into these decisions, ... it is not explicitly stated in the legislation that guides this process (the Children Act 1989) (and) this has contributed to a perception that the law does not fully recognise the important role that both parents can play in a child's life'. It added that '(w)hether courts are involved or not, in too many cases one parent is left in a position where it is very hard to retain a strong and influential relationship with his or her child. This can result in children losing contact completely with one parent (usually the father), often with a lasting impact on their lives. The Government firmly believes that parents who are able and willing to play a positive role in their child's care should have the opportunity to do so. The aim of the legislative amendment is also to reinforce the expectation at societal level that both parents are jointly responsible for their children's upbringing' (Consultation Paper 2012, para 3.2).

14. In the statement that the absence of a reference to 'shared parenting' has contributed to a perception that the law does not fully recognise the important role that both parents can play in a child's life', it is unclear whether the 'perception' referred to is that held by certain litigants or by 'society' in general. If the former, the issue appears to be mainly cosmetic because the Consultation Paper also states that 'the benefit of ongoing involvement with both parents is already factored into these decisions'. If the latter, it is implausible that social perceptions are influenced by the contents of a statutory provision known only to certain legal specialists.

15. The reference to 'children losing contact completely with one parent (usually the father), often with a lasting impact on their lives' indicates what appears to be the major policy concern underlying the proposal. This is supported by the response of the Minister, Tim Loughton MP, when asked by a member of the Justice Select Committee why the government proposed to legislate:

    Because we think that that is the only way we are really going to achieve the progress in terms of making sure that more children whose parents split retain a full relationship with those parents.

The problem at the moment, depending on which surveys one looks at-it is a difficult situation to analyse exactly-is that up to a third of children whose parents split lose substantial or total contact with the non-resident parent in a matter of a couple of years. That non-resident parent is usually the father, but not exclusively. There are 12% of cases where residency is with the father. Now, that is bad for the child. Again, empirical evidence will show that a child who has not benefited from the full engagement of both parents where that is possible will do less well in an education environment, employment, health and so on.

(Session 2012-13: UNCORRECTED TRANSCRIPT OF ORAL EVIDENCE To be published as HC 282-I; House of COMMONS; Oral EVIDENCE TAKEN BEFORE the Justice Committee: The operation of the Family Courts: follow-up: Wednesday 13 June 2012).

16. However, as explained below, there is no evidence that any of the proposals in the Consultation Paper will have any effect on this situation because the proposed legislation applies to contested court cases, whereas in the circumstances mentioned by the Minister the contact is usually lost without any legal proceedings having taken place. There is, however, evidence that implementation of any of the first three options in the wording proposed in the Consultation Paper could have harmful effects on some children.

The evidence

(A) Loss of Contact between Children and Fathers

17. Court records studied in the 1970s suggested that about 30% of non-resident parents lost touch with their children after divorce (Eekelaar and Clive 1977). In 1997 Maclean and Eekelaar (1997: 121) found that, of formerly married parents interviewed, 32% stated that after separation either there had never been contact between the child of the marriage and the non-resident parent, or that contact had ended later or become severely disrupted. A large survey by the Office for National Statistics in 2007-2008 found that 28% of children in the resident parent sample and 14% of children in the non-resident parent sample had neither direct nor indirect contact with their non-resident parent (Lader 2008: 8). Those parents are, of course, overwhelmingly fathers. In Australia, too, the proportion of non-resident parents who lose contact has been shown to range from 27%-30% in the period 1997-2007 (Kaspiew *et al.* 2009: 129) and a similar proportion of separated fathers appear to lose contact with their children in France (Vonèche and Bastard 2007) and in the United States (Amato *et al.* 2009).

18. While this supports the Minister's statement that about one-third of children either lose contact or have severely diminished contact with the non-residential parent, it is to be noted that this occurs in a variety of jurisdictions with different legal provisions, suggesting that the causes are social and that the form of the law may have little consequence. The causes of this loss of contact are little understood. Possible associated factors are the nature of the family relationship during marriage (Vonèche and Bastard 2007; Fortin 2012), the length of time the non-resident parent had lived with the child

(Maclean and Eekelaar 1997) and the length of time since separation and distance (Tazi-Preve 2008). There is no evidence that the explanation lies in adverse court decisions, since only about 10 per cent of arrangements between parents concerning contact are adjudicated (Lader 2008: 12) and in about three-quarters of cases where contact is contested in court, a final contact order is made (Cassidy and Davey 2011: 10). In a survey of 398 young adults who had experienced parental separation in their childhood, only 8% attributed responsibility of loss of contact to the residential parent, while 62% attributed this to the non-residential parent (Fortin 2012). Nor is there any evidence to support the belief that introduction of the proposed legislation will affect the behaviour of those fathers who lose or greatly diminish their contact with their children after separation.

(B) Greater intensity of contact when exercised

19. There is, however, evidence that the proportion of non-residential parents exercising contact may be increasing, and that when contact is exercised, it is done so more intensely. In the United States, the proportion of children maintaining contact with non-resident fathers rose from 63% in 1976 to 71% in 2002. However, of those who maintained contact, the proportion seeing their father at least once a week rose from 18% in 1976 to 31% in 2002 (Amato *et al.* 2009). In the UK, information, drawn from a nationally representative survey of 40,000 households, and based on reports by 'non-resident' parents, reported that 14.6% of all such parents stated that contact occurred every day; 21.9% that it occurred several times a week; 19.2% that it happened at least once a week and 3.1% saying care was shared equally (Fehlberg *et al.* 2011: 3, based on Ermisch *et al.* 2011 with additional information from A.J. Skew).

(C) Effects of contact and absence of contact between children and a non-resident parent

20. There is firm evidence that, in general, children do better when raised by two parents than by one. However such generalisations need to be qualified by the presence of moderating factors. Jaffee and colleagues (2003), for example, found that the more exposed children were to fathers who engaged in high levels of anti-social behaviour, the greater the risk that the children would do so too. There is also clear evidence that, in general, children of separated parents benefit from having a positive relationship with an absent parent who engages with them in a meaningful and serious way (Amato and Gilbreth 1999; Lamb 2007: 17).

21. However, this generalisation also needs to be qualified in cases of high conflict. While even in cases where the parents are deeply conflicted with one another, a child's relationship with a non-resident father may improve through spending more time with him (Fabricius *et al.* 2012), it has been maintained that the increased contact results from having a better relationship (McIntosh *et al.* 2012: 175). There is substantial evidence showing 'that more frequent transitions and more shared access between high-conflict parents were associated with more emotional and behavioural disturbance among children, especially girls' (Johnston 1995: 420) and that 'for children from high conflict

families, arrangements involving frequent contact with both parents are more likely to be harmful rather than helpful.' (Shaffer 2007: 306). In Australia, McIntosh *et al.* (2010: 9) found that 'regardless of socio-economic background, parenting or inter-parental cooperation, shared overnight care of children under four years of age had an independent and deleterious impact on several emotional and behavioral regulation outcomes ' and that children in ongoing shared-time arrangements (35%+ shared overnights) were more likely to have significantly higher hyperactivity/inattention scores than children of all other time sharing arrangements. This was particularly so for boys and for children living in rigid arrangements (McIntosh *et al.* 2010: 65).

22. This study of high conflict parents also found significantly higher rates of emotional symptoms in children in rigid, unresponsive care arrangements regardless of whether parents had primary or shared parenting arrangements (McIntosh and Smyth 2012: 176). This does not mean that *any* degree of parental conflict is necessarily harmful to children, or that engagement in the legal process is *in itself* likely to have lasting ill-effects on children (Lamb: 2007) or that it is not possible for children to benefit from contact where the parents are in conflict. But the evidence does show that cases of high conflict can be very complex, and the benefits to children of continued parental involvement with children are strongly dependent on the circumstances of individual cases (Lamb 2012: 234).

    This is relevant to the government's proposals because the proposals would apply to cases that require judicial determination; that is, to that subset of divorcing parents where conflict is likely to be the highest and care arrangements are likely to be closely defined.

(D) A brief look at international experience

The United States: Wisconsin

23. The development in Wisconsin was similar to that in many other American states (Parkinson 2011: 45-47). In 1987 courts were required to allocate periods of physical custody with both parents unless 'after a hearing, the court finds that physical placement with a parent would endanger the child's physical, mental or emotional health'. In 1999, the legislature enacted a presumption of joint *legal* custody (rebuttable on evidence of violence or abuse), required divorcing parents to submit a 'parenting plan' to the court, and enacted that courts should schedule living arrangements in a way that 'allows the child to have regularly occurring, meaningful periods of physical placement with each parent and that maximizes the amount of time the child may spend with each parent taking into account geographic separation and accommodations for different households.' But at the same time courts were to 'consider' each case on the basis of a list of 17 considerations, and treat the safety of the child and other parent as 'paramount concerns' in cases of violence and abuse. The proportion of placements that were 'shared' was 32 per cent in 2001, compared to only 2 per cent in 1980-1981.

24. Melli and Brown (2008) compared parents who had children under shared placement arrangements (defined as more than 30 per cent of time with each parent), and under a sole placement arrangement (where one parent had 70 per cent or more). Among other things, they found that shared-time mothers were more likely to report having a friendly relationship with the father than the sole placement mothers and 90 per cent reported the child's emotional health to be good. However, the sample did not distinguish cases where the parties agreed the outcome and those few that were decided by a judge, and the researchers concluded: 'This article points out that family roles are changing and that role change is reflected in the increase in post-divorce shared time. But that is not a brief for a legislative presumption of shared time … the arrangements they made for shared time may be more a result of social change than of legislative direction.' (Melli and Brown 2008: 261).

Sweden and Denmark

25. In 1998 Swedish courts were permitted to order joint custody (meaning joint decision-making) against the wishes of a parent. This was changed in 2006 and courts were required to consider how far parents are likely to cooperate before making a joint custody order, and also the risk of any harms that might arise for the child and family members (Singer 2008).The incidence of children alternating their home between their parents in Sweden is relatively high (21% in 2005). It has been noted that there is little evidence about the children's responses to these arrangements and recommended that it should only be done if parents are able to co-operate and the children desire it (Singer 2008). In Denmark an enactment of 2007 similar to the Swedish law of 1998 that encouraged courts to order that children's time was shared equally between parents even if they did not agree equal shared was later seen to be harmful to children, and its repeal was agreed in 2012.[2]

Australia

26. The Australian legislation comprises a complex mix of concepts: responsibility, rights, objects, principles, presumptions and considerations. In brief, the Family Law (Shared Parental Responsibility) Act 2006 introduced a presumption that 'equal shared parental responsibility' (meaning that the parents are bound to consult on any 'major long-term issue', defined in the Act, and to make a genuine effort to agree about it) is in the best interests of children, though it can be rebutted and does not apply in cases of family violence or child abuse. Its objects are to ensure that the best interests of children are met by

    (a) ensuring that children have the benefit of both of their parents having a meaningful involvement in their lives, to the maximum extent consistent with the best interests of the child; and

---

[2] The Copenhagen Post, online, http://www.cphpost.dk/news/national/parliament-end-50-50-child-custody-rule (accessed 2 April 2012).

(b) protecting children from physical or psychological harm from being subjected to or exposed to abuse, neglect or family violence, and

(c) ensuring that children receive adequate and proper parenting to help them achieve their full potential; and

(d) ensuring that parents fulfil their duties, and meet their responsibilities, concerning the care, welfare and development of their children.

27. It is to be noted that the *presumption* is expressed as one about what is in a child's best interests, and refers only to parental responsibility, not to living arrangements. However, once equal parental responsibility is ordered, courts are expressly required to consider whether it is further in the child's interests to spend equal time or a substantial and significant time with both parents. This was clearly intended to affect outcomes, and has done so.

28. A major evaluation of the reforms has shown that shared time arrangements by agreement had started rising before the legislation (by 1 percentage point a year between 2003 and 2008) and that this continued at the same rate afterwards, suggesting that legislation in itself had little effect on a pre-existing trend (Kaspiew *et al.* 2009: 129). However, there was a marked increase in *judicially imposed* shared time (from 4% to 34% of cases where contact hours were specified) after the legislation (Kaspiew *et al.* 2009: 132). These are likely to be the most highly conflicted cases. This is important because, although that evaluation did not demonstrate any differences for children in high conflict cases related to whether they were in shared care or not, another study for the Attorney-General's Department, based on two different samples, did indicate that shared care arrangements (defined as five overnight stays per fortnight) are likely to cause children distress where they follow from rigid patterns such as are often set out in court orders, and to be harmful in any case where they are under four years old (McIntosh *et al.* 2010). It was also found that where parents agreed shared care, those parents who expressed concerns about the safety of the children associated with ongoing contact were no less likely than other parents to indicate that they had shared care time. Around one in four fathers and one in ten mothers with shared care-time arrangements indicated that they held such concerns as a result of ongoing contact (Kaspiew *et al.*. 2009: 233). This showed that expectations about achieving the perceived social goal of shared care would frequently take precedence over a parent's concerns about the child's safety. An Australian commentator warns: 'If parliamentarians want to send a legislative message, they must reflect carefully on what the precise message is, its suitability for a wide range of children, and on how that message is likely to be interpreted by the particular users of the family law system' (Young 2012: 19).

The options

A. First option

29. The first option would insert the following text as a new subsection after section 1(2) of the Children Act 1989 and before the 'welfare checklist':

    "*In the circumstances mentioned in subsection (4)(a) or (4A) the court is to presume, unless the contrary is shown, that the welfare of the child concerned will be furthered by involvement in the child's upbringing of each parent of the child who can be involved in a way not adverse to the child's safety.*"

    (11.1)

Comment

30. A presumption of this kind is intended to 'steer' the court towards a particular conclusion in the case before it, requiring some extra material to overcome this conclusion. When it fashioned the legislation that was to become the Children Act 1989, the Law Commission (1986: 199-200) carefully considered this structure, and rejected it, saying it was wrong to approach a case on the basis of a prior assumption about how it should be concluded because it 'would have potentially arbitrary and undesirable results' and place the party arguing for a different outcome at an unfair disadvantage. It preferred the strategy of setting out a check-list of factors to be taken into account when making the decision on the stipulated basis that the child's welfare must be the court's 'paramount consideration,' and this is done in the s. 1(3) of the 1989 Act. Nevertheless, the Law Commission's proposals, which were incorporated into the Children Act 1989, were intended to facilitate shared parenting arrangements in all cases where these were in the best interests of the child concerned. It did so in several ways: (i) by recognising the right of parents to agree their own arrangement for the child, without having these imposed by a court; (ii) by providing a flexible menu of orders which allows for a variety of shared care arrangements; and (iii) by making it clear that parents could agree or courts could order that a child should spend time living with each of separated parents. The courts now approve or order shared parenting arrangements far more readily than they did in the past.

31. It might be argued that the outcome articulated in the presumption is so clearly advantageous to the child that favouring it in this way is likely to benefit the child in question. However, *in the type of case likely to be before the court*, the current balance of evidence certainly does not warrant an assumption that forms of shared care are likely to be beneficial *to the child in question*. As explained above, it shows that its benefits or detriments are highly case-specific.

32. However, the evidence referred to concerned contact and shared care, whereas the outcome specified in the presumption is '*involvement* in the child's upbringing of each parent of the child who can be involved in a way not adverse to the child's safety.'

33. Two comments may be made about this. The first is that the interests of the child go beyond matters of 'safety', and include his or her general well-being. The object therefore is not just to avoid unsafe conditions, but to achieve beneficial ones.

34. The second is that 'involvement' is a very broad term, and could easily be seen as encompassing either significant levels of contact and shared care arrangements or something minimal. If the outcome that is presumed to be beneficial is so vague, confusion and uncertainty is likely to follow, as occurred in Australia when complex new legislation was enacted (Fehlberg *et al.* 2009). For example, is the maximum possible involvement to be presumed beneficial subject only to safety concerns? Or is the degree of involvement to be assessed against the 'best interests' standard? There is much scope for argument, which can only aggravate already conflicted situations.

35. This might be alleviated by more precise wording. The fact that courts very rarely *prevent* any contact with an absent parent, and use such measures as supervised contact in difficult cases, indicates that they usually consider that *some* degree of involvement is in the child's interests in cases before them. The following wording would be consistent with current evidence:

    "*In the circumstances mentioned in subsection (4)(a) or (4A) the court is to presume, unless the contrary is shown, that the welfare of the child concerned will be furthered by involvement in the child's upbringing of each parent of the child who can be involved in a way not adverse to the child's safety, **the extent and nature of the involvement being determined according to the child's best interests**"*

    Or,

    "*In the circumstances mentioned in subsection (4)(a) or (4A) the court is to presume, unless the contrary is shown, that the welfare of the child concerned will be furthered by involvement in the child's upbringing of each parent of the child who can be involved **to such a degree and in such a way as to be in the child's best interests**."*

36. However, Option Four, re-phrased as suggested below (paragraph 45**)**, achieves essentially the same result in a more straightforward manner which is consistent with the structure of the Act.

B. Second option

37. The second option is phrased in this way:

    > "*In the circumstances mentioned in subsection (4)(a) or (4A), the court shall have regard to the general principle that, irrespective of the amount of contact a child may have with any parent, the child's welfare is likely to be furthered by the fullest possible involvement of*

each parent of the child in the child's life".

Comment

38. In legal discourse, a principle is a normative statement, that is, a proposition about what ought to be done (usually, weighed against other normative propositions). It is not a proposition about a state of affairs that can be subject to empirical verification.

39. In the Children Act, the direction to seek to achieve the 'best interests' of the child in question is clearly a principle. The proposition that a 'child's welfare is likely to be furthered by the fullest possible involvement of each parent of the child in the child's life' is not a principle, but an empirical claim. Calling it a principle is confusing and inconsistent with the true principle, which is the 'best interests' principle.

40. The 'principle' is therefore likely to operate in a way very similar to a presumption. The extent to which enacting a presumption is supportable by current evidence has been discussed in connection with Option One.

C. Third option

41. The third option proposes the text:

> "*In the circumstances mentioned in subsection (4)(a) or (4A), the court's starting point is to be that the welfare of the child concerned is likely to be furthered if each parent of the child is involved in the child's upbringing.*"

Comment

42. The Consultation paper itself observes that this is likely to operate in the same way as a presumption. It is not clear why the reference to safety is omitted. The same comments therefore apply as were made with respect to Option One.

D. Fourth option

43. The fourth option proposes the text:

> "*In the circumstances mentioned in subsection (4)(a) a court shall also, and in the circumstances mentioned in subsection (4A) a court shall, have regard in particular to enabling the child concerned to have the best relationship possible with each parent of the child*".

44. This follows the present structure of the Children Act 1989 as it adds an extra consideration to the existing 'check-list'. There is a strong case for introducing something of this kind into the 'check list'. The fact that explicit reference to co-operative parenting in some form was not included in the original check-list almost certainly reflects the fact that the idea was less prevalent at that time. Its greater prevalence today, reflected in the evidence referred to earlier, is a strong reason for its introduction as a factor, alongside other factors, that needs to be considered. This is also supported by the evidence that suggests that inter-parental conflict is not necessarily inconsistent with

beneficial outcomes where significant contact is maintained, and such significant contact is therefore an important factor to be considered in each individual case, without presuming that it would actually be beneficial for the child in that case.

45. However, the wording in Option Four might be strengthened. An alternative, could be:

    "*In the circumstances mentioned in subsection (4)(a) a court shall also, and in the circumstances mentioned in subsection (4A) a court shall, have regard in particular* ***whether to and to what extent and in what manner a continuing relationship with each parent would be in the best interests of the child concerned***"

    This alternative would require courts in each case to consider the possible benefits of continuing the child's relationships with both parents and the best way of doing in the light of the child's best interests this without pushing them towards a particular outcome.

46. In the Consultation Paper (para 4.6) the Government stated that it believed that 'greater transparency as to the importance that courts place on both parents remaining involved in a child's life will have a positive influence on wider aspects of the dispute resolution process'. It is not clear on what evidence this belief is based. However, the addition of a new consideration into the check-list of this kind could be said to enhance 'transparency' in the way desired by the government.

General comment

47. It is notable that the Consultation Document does not provide an option favouring no legislative change although that was the recommendation of the Family Justice Review. This is so despite the fact that any of the legislative options given raise at least reasonable grounds for concern that such intervention, especially if it takes the form of Options 1-3, could jeopardise the application of the best interests principle as feared by the Law Commission in 1986, and referred to above at paragraph 30**.**

48. Since all of the four proposals would, if enacted, apply only to a small minority of contested cases, none of them would have any effect on the larger number of non-resident parents who lose contact with their children without any litigation occurring. If the policy objective of the government is to reduce the overall extent to which children lose contact with a non-residential parent, it is surprising that it has not considered introducing a mechanism whereby non-residential parents might be placed under a duty to interact with their children. Anecdotally, it seems that some New Zealand judges may be prepared to enforce such a duty (Communication from Professor Mark Henaghan, University of Otago). In Scots law, non-resident parents are under a duty 'if the child is not living with the parent, to maintain personal relations and direct contact with the child on a regular basis.' (Children (Scotland) Act 1995, s. 1(1)(c)). However, it seems that this is hardly ever enforced, if at all (Communication from Professor Elaine Sutherland, University of Stirling). There is no evidence about the effectiveness of such orders or what effect they may have on children and parents. This demonstrates the difficulty in

achieving the apparent aspiration of government policy of reducing the extent of loss of contact between children and non-residential parents through legislation.

49. In the absence of such orders, the only policy initiative that directly addresses that problem is found in the new approach to child maintenance. In this context, the government has said: 'We want to encourage parents to draw on a range of support to help them reach family-based arrangements for child maintenance which will facilitate co-parenting and the ongoing involvement of both parents in children's lives' (Department for Work and Pensions 2011: Executive Summary, para 5). Emphasis on co-operative parenting in the information provided through the 'information gateway' has the potential to encourage greater involvement by non-residential parents in the lives of their children, but this has yet to be demonstrated.

August 2012

A submission from:

The British Academy

10 Carlton House Terrace

London SW1Y 5AH

For further information contact:

Emma McKay

The British Academy Policy Centre

e.mckay@britac.ac.uk

The British Academy, established by Royal Charter in 1902, champions and supports the humanities and social sciences across the UK and internationally. It aims to inspire, recognise and support excellence and high achievement. As a Fellowship of over 900 UK humanities scholars and social scientists, elected for their distinction in research, the Academy is an independent and self-governing organisation, in receipt of public funding. Views expressed in this submission are not necessarily shared by each individual Fellow.

References

Amato, P.R. and J.G. Gilbreth (1999) 'Non-resident fathers and children's well-being: a meta-analysis' 61 *Journal of Marriage and Family* 557-73.

Amato, P.R., Meyers, C.E. and R. E. Emery (2009) 'Changes in Nonresident Father-Child Contact from 1976 to 2002' 41 *Family Relations* 41-53.

Cassidy, D. and Davey, S. (2011) *Family Justice Children's Proceedings – Review of Public and Private Law Case Files in England and Wales*, Ministry of Justice Research Summary 5/11.

Consultation Paper (2012) 'Co-operative Parenting following Family Separation: Proposed Legislation on the Involvement of both Parents in a Child's Life' (Department for Education).

Department for Work and Pensions (2011) *Strengthening families, promoting parental responsibility: the future of child maintenance* (Cm 7990).

Eekelaar, John and Eric Clive (1977), *Custody after Divorce* (Oxford, SSRC Centre for Socio-Legal Studies)

Ermisch, J., Iacovou, M and Skew, A.J. (2011) 'Family Relationships' in S. McFall (ed) *Understanding Society* (Swindon, ESRC).

Fabricius, W.V., Sokol, K.R., Diaz, P. and Braver, S.L. (2012) 'Parenting Time, Parent Conflict, Parent-Child Relationships, and Children's Physical Health' in Kathryn Kuehnle and Leslie Drozd (eds) *Parenting Plan Evaluations: Applied Research for the Family Court* (Oxford University Press), ch. 7.

Fehlberg, B., Millward, C. And Camp, M. (2009) 'Post-separation parenting in 2009: an Empirical Snapshot' 23 *Australian Journal of Family Law* 247-275.

Fehlberg, B., Smyth, B., Roberts, C. And Maclean, M. (2011) *Caring for children after parental separation: would legislation for shared parental time help children?* (Oxford, Department of Social Policy and Intervention).

Fortin, Jane (2012) 'Taking a longer view of contact: forthcoming research' 42 *Family Law* 906-908.

Jaffee, S., Moffitt, T.E., Caspi, A. and Taylor A. (2003) 'Life with (or without) father: The benefits of living with two biological parents depend on the father's antisocial behavior' *Child Development* 74 (1) 109-126.

Johnston, J. R. (1995) 'Children's Adjustment in Sole Custody as compared to Joint Custody Families and Principles for Custody Decision Making' 33 *Family Court Review* 415-425

Kaspiew, R., M. Gray, R. Weston, L. Moloney, K. Hand and L. Qu and the Family Law Evaluation Team (2009) *Evaluation of the 2006 Family Law Reforms* (Melbourne: Australian Institute of Family Studies).

Lader, D. (2008) *Non-resident parental contact 2007/8,* Omnibus Survey Report No 38 (Office for National Statistics).

Lamb, M.E. (2007) 'Improving the Quality of Parent-child Contact in Separating Families' in Mavis Maclean (ed) *Parenting after Partnering: Containing Conflict after Separation* (Oxford, Hart Publishing), ch. 1.

Lamb, , M.E. (2012) 'Critical Analysis of Research on Patenting Plans and Children's Well-Being' in Kathryn Kuehnle and Leslie Drozd (eds) *Parenting Plan Evaluations: Applied Research for the Family Court* (Oxford University Press), ch. 8.

Law Commission (1986) *Family Law: Review of Child Law: Custody* Working Paper No 96 (London, HMSO).

Maclean, M. and Eekelaar, J. (1997), *The Parental Obligation* (Oxford: Hart Publishing).

McIntosh, J., B. Smyth, M. Kelaher, Y. Wells and C. Long (2010) *Post-separation parenting arrangements and developmental outcomes for infants and children* (Canberra: Attorney-General's Office).

McIntosh, J. and Smyth, B. (2012) 'Shared-Time Parenting: An Evidence-Based Matrix for Evaluating Risk' in Kathryn Kuehnle and Leslie Drozd (eds) *Parenting Plan Evaluations: Applied Research for the Family Court* (Oxford University Press), ch. 6.

Melli, M.S. and Brown, P.R. (2008) 'Exploring a New Family Form – the Shared Time Family' 22 *International Journal of Law, Policy and the Family* 231-269.

Ministry of Justice (2011a), *Family Justice Review, Interim Report* (London: Ministry of Justice).

Ministry of Justice (2011b) *Family Justice Review, Final Report* (London: Ministry of Justice).

Parkinson, P. (2011) *Family Law and the Indissolubility of Parenthood* (Cambridge University Press)

Shaffer, M. (2007) 'Joint Custody, Parental Conflict and Children's Adjustment to Divorce: What the Social Science Literature does and Does not Tell us' 26 *Canadian Family Law Quarterly* 286-313.

Singer, A. (2008) 'Active Parenting or Solomon's Justice? Alternating residence in Sweden for children with separated parents' 4 *Utrecht Law Review* 35-47.

Tazi-Preve, I. (2008) 'Why Postdivorce Fathers Do not Have Contact to their Children. A Case Study from Austria' (http://epc2008.princeton.edu/download.aspx?submissionId=80309).

Vonèche, C, and Bastard, B. (2007) 'Why Some Children see their Father and Others do not: Questions arising from a Pilot Study' in Mavis Maclean (ed) *Parenting after Partnering: Containing Conflict after Separation* (Oxford, Hart Publishing), ch. 2.

Young, L. (2012) 'Australia: Reflections on the Shared Parenting Experience' in Bill Atkin (ed) *The International Survey of Family Law: 2012 Edition*. Bristol: Jordan Publishing Limited.