



The strengths and limitations of the English approach to supporting child wellbeing following parental separation



Liz Trinder, University of East Anglia



The presentation

- What does research indicate that children need post-separation?
- Is policy and practice in England evidence-based, re:
 - Legal framework
 - Private ordering
 - Litigating families

What promotes child wellbeing post parental separation?

- Economic security
- Shielding from conflict, especially violence
- Warm, authoritative resident parenting
- Warm, authoritative non-resident parenting
- [involvement in decision-making]
- No clear relationship between quantity of contact and child wellbeing



The English legal framework – strong encouragement of private ordering

- Automatic parental responsibility (legal custody) for all mothers, married fathers and jointly birth registering unmarried fathers
- Cursory check of arrangements for children at divorce only
- Opt-in contact/residence orders
- No order principle
- Children's welfare paramount + welfare checklist
- Strong assumption (presumption) of contact in case law



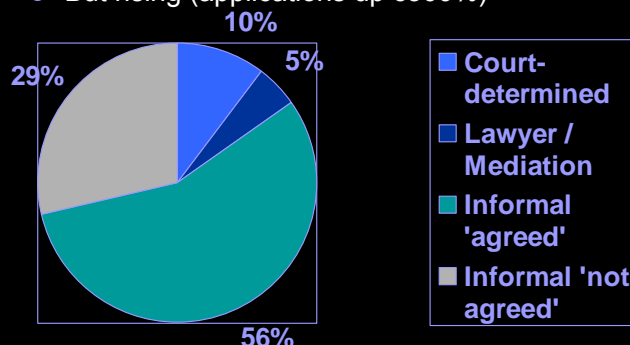
Underpinning rationale

- Traditional UK laissez-faire 'family policy' - non-intervention for 'normal' families coupled with protection of family autonomy
- And litigation seen as harmful
- And ever-increasing costs (relationship breakdown)



Family decision-making in practice

- Litigation is uncommon
- But rising (applications up c300%)



- 'Private ordering' is common
- A minority do not privately order or litigate



Contact by negotiation method

- Informal agreed – more contact, more frequently, more satisfied (generally)
- Court group – low contact, higher conflict, poorer relationship quality, lower parent/child wellbeing compared to community samples
- Informal not agreed – typically limited or no contact, low satisfaction



Privately ordered arrangements do work better (but without support)

- Selection effect
- Really are 'privately ordered'
- Optional (and unknown) parenting plans
- No real scrutiny - lawyers comment little on contact unless/until contact is presented as a problem
- Many children not consulted
- Very limited quality support services but parents want more individualised information and support





Non-litigating, no contact cases

- No attention given to 15-25% of cases where contact is (apparently) not being exercised/sought



'Legal solutions' for the litigating 10%

- For problematic cases – issues constructed as legal problems with legal solutions
- Settlement-orientated legal culture
- Increasing diversion into mediation or conciliation
- Negotiation (or adjudication) rather than education, facilitation and support
- Rule-bound, contact assumption





Criticism from all fronts

- Domestic violence lobby challenging the contact 'presumption' and bias
- Fathers rights groups challenging lack of statutory contact presumption and bias
- Judicial critique of delay
- Exclusion of children's voices
- Empirical research – court involvement does not address parental conflict, attitudes or behaviour



The current position – judicial tinkering?

- Rejection statutory contact or 50/50 presumption
- More diversion but within FJS (court dispute resolution)
- Enforcement regime: community service and contact activities
- Children's participation – judicial interviews
- 'Transparency' – open hearings



● ● ● | Research and policy: congruence

- Broad concept of the 'good divorce' and cooperative parenting informing policy
- 'Freedom' enables parents who are able to do so make private ordering work

● ● ● | Research and policy: gaps

- Courts focus on quantity not quality (authoritative parenting and conflict)
- Contact assumption marginalises risk assessment





Research and policy: distortion

- Contact generally helpful → contact presumption
- Conflict harmful → settlement (and settlement = end of conflict)



Summing up

- Laissez-faire 'works' for those who can make it work
- Legal solutions for (usually) non-legal problems
- More, earlier and different help is required – Australian neighbourhood centres?