

# Research

## Shared residence: a review of recent research evidence

Liz Trinder\*

*Shared residence, where children divide their time between parents after separation or divorce is becoming more common. This paper reviews recent empirical research on the prevalence and durability of shared residence arrangements, the satisfaction of parents and children, and the impact of shared residence on child well being. The evidence reviewed suggests that shared residence can be a positive outcome where parents are able to co-operate and where arrangements are centred around children's needs but that shared residence in higher conflict cases, typically following litigation, is associated with negative outcomes for children. The review concludes that the adoption of a shared residence presumption in England and Wales would, following recent Australian experience, lead to a rapid expansion of the 'wrong type' of shared residence, that is amongst the high conflict litigating cases least equipped to make it work for children.*

### INTRODUCTION

Over the last decade there has been an increase in the numbers of children who divide their time between both parents in 'shared residence' or 'shared care' arrangements.<sup>1</sup> This rise has occurred in England as well as other similar jurisdictions, including the United States, Australia and Sweden.<sup>2</sup> Early research in the US and Australia suggested that shared residence was the choice of a distinctive group of well-resourced and co-operative parents.<sup>3</sup> More recently, there has been a greater willingness amongst judges and legislators to enable, encourage or even mandate the use of shared residence for litigating parents.<sup>4</sup> In England, case law has evolved from a position where shared residence orders were deemed appropriate in only 'exceptional circumstances' (*Re H (A Minor) (Shared Residence)*),<sup>5</sup> to 'unusual circumstances' in *A v A (Minors) (Shared Residence Order)*,<sup>6</sup> to the position in *Re W (Shared Residence Order)* where Wilson LJ stated that shared residence orders were

\* Professor, School of Law, Exeter University, UK.

My thanks are due to Belinda Fehlberg, Joan Hunt, Rae Kaspiew and Bruce Smyth for assistance in navigating the research findings and for comments on an earlier draft of this paper.

<sup>1</sup> See the use of these terms discussed below.

<sup>2</sup> B. Smyth, 'A 5-year retrospective of post-separation shared care research in Australia' (2009) 15 *Journal of Family Studies* 36.

<sup>3</sup> Ibid. See also H. Irving and M. Benjamin, 'Shared parenting and sole custody', in H. Irving and M. Benjamin (eds), *Family Mediation: Contemporary Issues* (Sage, 1st edn, 1995).

<sup>4</sup> For analysis of the developments in case law see S. Gilmore, 'Shared residence: a summary of the courts' guidance' [2010] Fam Law 285; P. Harris and R. George, 'Parental responsibility and shared residence orders: parliamentary intentions and judicial interpretations' [2010] CFLQ 151.

<sup>5</sup> [1994] 1 FLR 717.

<sup>6</sup> [1994] 1 FLR 669.

not contingent upon 'unusual' or 'exceptional' circumstances.<sup>7</sup> Elsewhere some jurisdictions, notably Australia,<sup>8</sup> have gone considerably further in actively promoting the use of equal or substantial time with a consequent increase in shared care, especially amongst litigating populations. In England a Shared Parenting bill sponsored by Conservative MP Brian Binley is scheduled to have a Second Reading in July 2011.

Nonetheless, the child's welfare remains the paramount consideration. As Baroness Hale of Richmond remarked in the shared residence case *Holmes-Moorhouse v Richmond-Upon-Thames LBC*:

'When any family court decides with whom the children of separated parents are to live, the welfare of those children must be its paramount consideration: Children Act 1989, s1(1). This means that it must choose from the available options the future which will be best for the children, not the future which will be best for the adults'.<sup>9</sup>

The challenge therefore is to identify what is in children's best interests and whether or not the greater use of shared residence promotes children's welfare in mediated and litigated cases, beyond the 'natural constituency' of well-resourced and generally co-operative self-selecting parents.

Until now the expansion of shared residence, especially in litigated cases, has largely run ahead of the empirical research on the possible advantages and disadvantages of shared residence for children. Indeed the Australian reforms were introduced by the Howard Government in response to pressure from fathers' groups in spite of the (albeit limited) evidence that was available at the time.<sup>10</sup> However, legislative changes and the recent increase in the number of shared residence arrangements, most notably in Australia, have prompted a rapid expansion in the evidence available to guide legislators and practitioners. The aim of this article therefore is to review and summarise the key messages emerging from these recent studies.<sup>11</sup> In the forthcoming discussion of the research, I will largely use the term 'shared care' rather than 'shared residence,' as it is the term commonly used in Australia and internationally. The term is used only to refer to the sharing of the child's time between each parent. It does not imply any particular degree of co-operation or co-ordination between the parents. The article will look in turn at the prevalence of shared care, the characteristics of shared care families, durability of arrangements, satisfaction of adults and children and the relationship between shared care and child well being. The last section of the review summarises research on the operation of the

<sup>7</sup> [2009] EWCA Civ 370, [2009] 2 FLR 436, at para [13].

<sup>8</sup> Family Law Act 1975, s 65DAA (Cth), as inserted by the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth).

<sup>9</sup> [2009] UKHL 7, [2009] 1 FLR 904, at para [30].

<sup>10</sup> See for example, J. McIntosh, 'Legislating for shared parenting: exploring some underlying assumptions' (2009) 47 *Family Court Review* 389; H. Rhoades, 'Revising Australia's parenting laws: a plea for a relational approach to children's best interests' [2010] CFLQ 172, at pp 173–174.

<sup>11</sup> See appendix 1 for a tabular summary of the research designs of the main studies. For earlier reviews of the research see J. McIntosh, *ibid*; B. Smyth, 'A 5-year retrospective of post-separation shared care research in Australia' (2009) 15 *Journal of Family Studies* 36; S. Gilmore, 'Shared parenting: the law and the evidence (Part 2)' (2010) 20 *Seen and Heard* 21.

shared parenting legislation in Australia. The paper does not include the extensive research on child support or ancillary relief; this is not to say that practical issues related to money are unimportant.<sup>12</sup>

At the start it is important to sound a note of caution on the evidence base. Whilst there are some very clear and persuasive messages emerging from recent research, largely reaffirming older studies, the following challenges remain:

- (1) There are still large gaps in the knowledge base. Almost everything that is known about shared care is based on international research, mostly from North America and Australia. There are no large-scale British studies of shared care. There is no study from any jurisdiction that tracks the pathways and outcomes of a cohort of litigated shared care cases.
- (2) Studies have generally failed to distinguish between different types of shared care families and instead have 'lumped' together co-operative, litigating and all types of families in between into a single 'shared care' group.<sup>13</sup> This is a problem, as McIntosh et al note 'Litigating and high conflict families who enter substantially shared care arrangements are different from cooperative parents who self select into shared parenting. They enter on a different track, and stay on that track by different means, with different outcomes'.<sup>14</sup>
- (3) There is an over-reliance on parent reports of children's experiences of shared care and the outcomes of care arrangements. Parents' reports of their children's well being typically reflect their reports of their own well being.<sup>15</sup> This means that with a few notable (and small-scale) exceptions, we have only a limited understanding of children's own experiences of shared care. It is also manifestly clear that mothers and fathers are not disinterested observers when reporting on how well children are doing in shared care and all studies clearly reveal that parent reports are highly gendered. More child self-report and reports from independent observers, such as teachers, are needed.
- (4) Finally, it is important to be aware that the terms 'shared residence' or 'shared care' can be used to cover a very broad range of timeshare arrangements. There is very little research just on 50/50 'equal time' arrangements, given the low numbers of these in the population.<sup>16</sup> More commonly researchers use a looser definition of shared care based on 35%–65% of overnights. In some studies the cut-off is set at 30% of overnights – reflecting the threshold at which parenting time adjustments begin under child support guidelines in some jurisdictions.

---

<sup>12</sup> But see B. Fehlberg, C. Millward and M. Campo, 'Shared post-separation parenting in 2009: An empirical snapshot' (2009) 23 *Australian Journal of Family Law* 247; B. Fehlberg, C. Millward and M. Campo, 'Post-separation parenting arrangements: child support and property settlement: exploring the connections' (2010) 24 *Australian Journal of Family Law* 214; R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at pp 175–203, 222–230. Available at <http://www.aifs.gov.au/institute/pubs/fle/index.html>.

<sup>13</sup> B. Smyth, 'A 5-year retrospective of post-separation shared care research in Australia' (2009) 15 *Journal of Family Studies* 36, at p 52.

<sup>14</sup> J. McIntosh, B. Smyth, M. Kelaher, Y. Wells and C. Long, *Post-separation parenting arrangements and developmental outcomes for infants and children. Collected Reports. Three reports prepared for the Australian Government Attorney-General's Department* (Attorney-General's Department, 2010), at p 104. Available from the Attorney-General's Department website: [www.ag.gov.au](http://www.ag.gov.au).

<sup>15</sup> This is known more technically as a form of 'shared method' variance.

<sup>16</sup> Or, more precisely, where each parent has between 48%–52% of overnights.

## PREVALENCE: HOW COMMON IS SHARED RESIDENCE?

Shared residence remains relatively uncommon although the numbers are rising. There is just a single contemporary UK study that estimates the numbers of shared residence arrangements. Using a nationally representative community sample<sup>17</sup> Peacey and Hunt found that between 9%–12% of parents reported children having at least three overnights per week with each parent or having arrangements which added up to around half the year with each.<sup>18</sup>

The figures in Australia are broadly similar. Two recent Australian studies suggest that shared care occurs in somewhere between 8%–12% of separated families.<sup>19</sup> The figure rises to 16%–17% in recently separated families.<sup>20</sup> The number of 'equal care' arrangements is smaller with between 4%–7% reporting timeshares of 48%–52%.<sup>21</sup> In Norway 10% of children have equal or near equal arrangements.<sup>22</sup> Wisconsin has a particularly high rate of shared care following legislative changes in 1999, with 32% shared care, albeit defined as 30% of overnights.<sup>23</sup>

It has been suggested that a combination of factors explains the small but steady rise in shared care internationally. These include a range of interconnected social factors such as the growth in women's paid employment, greater father involvement and concerns with work/family balance.<sup>24</sup> There are also suggestions that child support rules in some jurisdictions may offer an economic incentive to fathers to pursue shared care or at least to facilitate strategic bargaining, although disentangling financial and

<sup>17</sup> A community sample is drawn from the entire relevant population, that is, a sample of all separating or divorcing parents. In contrast, other studies are drawn exclusively from litigating or court samples. In the UK and Australia a representative community sample will therefore include a small percentage of litigants, reflecting their low proportion within the whole population of divorced and separated families. See appendix 1, below, for a tabular summary of the sample composition of all the main studies reviewed in this paper.

<sup>18</sup> The authors do note, however, that the figure is 'unexpectedly high' and should be tested with further research. V. Peacey and J. Hunt, *Problematic contact after separation or divorce* (Gingerbread and Nuffield Foundation, 2009), at p 19. Available online at <http://www.gingerbread.org.uk/>.

<sup>19</sup> J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales, 2010), at p 18. Available at <http://www.ag.gov.au/>; R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at p 119. Estimates vary partly due to different units of analysis, time since separation and sampling date.

<sup>20</sup> B. Smyth, 'A 5-year retrospective of post-separation shared care research in Australia' (2009) 15 *Journal of Family Studies* 36, at p 40.

<sup>21</sup> J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales, 2010), at p 18; R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at p 119.

<sup>22</sup> K. Skjærten and R. Barlindhaug, 'The involvement of children in decisions about shared residence' (2007) 21 *International Journal of Law, Policy and the Family* 373, at p 376.

<sup>23</sup> M. Melli and P. Brown, 'Exploring a new family form – the shared time family' (2008) 22 *International Journal of Law, Policy and the Family* 231, at p 232.

<sup>24</sup> B. Smyth and L. Moloney, 'Changes in Patterns of parenting over time: A brief review' (2008) 14 *Journal of Family Studies* 7; P. Amato, C. Meyers and R. Emery, 'Changes in Nonresident Father-Child Contact from 1976 to 2002' (2009) 58 *Family Relations* 41.

care motivations is fraught with difficulty.<sup>25</sup> Legislative change promoting shared care or the equivalent has clearly been significant in some jurisdictions, including Wisconsin and Australia.

The picture is more mixed in relation to the extent to which shared residence/care is ordered, or endorsed, by family courts in different jurisdictions. There are no English studies on how many families opt for shared residence after consulting solicitors or mediating. For those families who litigate, there is some evidence that shared residence is less common than in the wider community. In a court file study of section 8 contact cases Hunt and Macleod found only five of 292 completed contact cases (2%) where a shared residence order was made.<sup>26</sup> In a sample of 250 litigating parents, 7% of parents had a 35%–65% time split prior to an in-court conciliation session, none of which had been court-ordered. Of the 179 parents who reached an agreement in the conciliation appointment, only 6% of the split the time 35%–65%.<sup>27</sup> It should be recognised, however, that both the Hunt and Macleod and Trinder et al studies were based on samples of contact cases only and excluded residence order applications.

The picture is very different in jurisdictions which have moved to a shared residence/care presumption.<sup>28</sup> In Australia, the greatest expansion in shared care since the 2006 reforms is quite clearly amongst mediated and litigated cases and not the lower conflict informally agreed cases. Under Australian law, mediators and other advisors are required to inform parents of the possibility of equal or substantial time,<sup>29</sup> and proportionally more parents (24%) leave mediation with shared care<sup>30</sup> than the 8%–16% community figure noted above.

In litigated cases, when Australian family law courts order that the presumption of equal shared parental responsibility applies, they are required to consider whether equal or substantial or significant time would be practicable and in the child's best interest.<sup>31</sup> The result has been that up to a third of litigated cases result in shared care arrangements. In a case file analysis by the Australian Institute of Family Studies

<sup>25</sup> Lawyers may take a particularly sceptical view of paternal motivations. In the recent AIFS evaluation, 68% of lawyers thought that potential payers of child support were motivated to seek more time with children to reduce child support liabilities, R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at p 222–223 and see J. McIntosh, B. Smyth, M. Kelaheer, Y. Wells and C. Long, *Post-separation parenting arrangements and developmental outcomes for infants and children. Collected Reports. Three reports prepared for the Australian Government Attorney-General's Department* (Attorney-General's Department, 2010), at p 97.

<sup>26</sup> J. Hunt and A. Macleod, *Outcomes of applications to court for contact orders after parental separation or divorce* (Ministry of Justice, 2008), at p 27.

<sup>27</sup> L. Trinder, J. Connolly, J. Kellett, C. Notley and L. Swift, *Making contact happen or making contact work? The process and outcomes of in-court conciliation* (Department for Constitutional Affairs, 2006) reanalysis of data.

<sup>28</sup> Or, more strictly in an Australian context, a 'mandated consideration'.

<sup>29</sup> Family Law Act 1975 (Cth) s 63DA, as inserted by the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth).

<sup>30</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at p 98. Note, the AIFS evaluation examines the family law reforms in their totality, including but not restricted to, shared care.

<sup>31</sup> Family Law Act 1975 (Cth) s 65DAA, as inserted by the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth).

(AIFS), 23% of litigated cases resulted in shared care.<sup>32</sup> However, excluding consent after proceedings and pure consent cases, the proportion of judicially determined cases resulting in shared care was 34%.<sup>33</sup> The most recent data from the Family Court of Australia confirms this picture with 33% of judicially determined cases resulting in 35%–65% time allocations.<sup>34</sup> It is worth underlining the point that the use of shared care in these higher conflict and higher risk cases is at twice or three times that found in the wider community.

At the same time it is important to recognise that the litigated shared care cases represent a much smaller proportion of the total number of shared care cases. In Australia, as in England, only a small proportion of families use the courts so although a high proportion of litigating families get shared care, they represent a small proportion of the overall number of shared care families. Thus in the AIFS evaluation, with a nationally representative sample of recently separated parents registered with the Australian Child Support Agency, the great majority of parents had agreed their own arrangements informally and only 2%–6% of all parents with shared care had reached those through the courts.<sup>35</sup> Similarly the Social Policy Research Centre at the University of New South Wales (SPRC) report 6%–7% of parents with shared or near shared care had reached those arrangements through litigation.<sup>36</sup> Although the numbers of litigated shared care cases are small they do in many cases, as we will see below, pose serious issues in relation to children's well being.

The rise in the number of *litigated* shared care cases in Australia can be clearly linked to the new statutory framework. The disproportionate use of shared care in litigated cases was not foreseen by the legislators and is viewed with considerable concern.<sup>37</sup> I consider this further below. Elsewhere a number of researchers have suggested that judges may be more willing to consider shared care in contested cases as a compromise solution for an impossible dilemma.<sup>38</sup>

### CHARACTERISTICS: WHICH FAMILIES HAVE SHARED RESIDENCE?

Building a profile of families with shared residence/care is complicated by the lack of any recent British studies. There are some robust US and Australian studies but there are possible issues in translating findings to a British context. A further complication is

<sup>32</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at p 125–126.

<sup>33</sup> *Ibid.*, at p 125. 18.5% of consent after proceedings cases resulted in shared care and 25.5% of pure consent cases.

<sup>34</sup> Family Court of Australia Shared Parental Responsibility Statistics 2008/2009 [http://www.familycourt.gov.au/wps/wcm/connect/FCOA/home/about/Court/Admin/Business/Statistics/SPR/FCOA\\_SPR\\_2008](http://www.familycourt.gov.au/wps/wcm/connect/FCOA/home/about/Court/Admin/Business/Statistics/SPR/FCOA_SPR_2008).

<sup>35</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at p 157.

<sup>36</sup> J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales, 2010), at p 41.

<sup>37</sup> See, for example, the report by Judge Richard Chisholm calling for an amendment to the Australian law: R. Chisholm *Family Courts Violence Review: A Report by Professor Richard Chisholm* (Attorney General's Department 2009). The report is a consultation document, including analysis of the legislation and court rules, rather than an empirical study. The report is available at [http://www.ag.gov.au/www/agd/agd.nsf/Page/Families\\_FamilyCourtsViolenceReview](http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_FamilyCourtsViolenceReview).

<sup>38</sup> J. McIntosh and R. Chisholm, 'Cautionary notes on the shared care of children in conflicted parental separations' (2008) 14 *Journal of Family Studies* 37; Smyth, *ibid.*

that it is clear from the discussion already that there are at least two broadly distinctive types of shared care – informally agreed/more co-operative and more conflicted; and perhaps an ambivalent group in between – yet to date few studies have explored this dimension in detail or sought to link family characteristics with the nature of arrangements and outcomes.<sup>39</sup>

Early Australian studies by Smyth and colleagues using data from focus groups triangulated with data from a random sample of separated parents suggested that families with shared care were a small and distinctive group who had self-elected shared care.<sup>40</sup> They were typically relatively higher income dual earners, living in fairly close proximity, with co-operative relationships and with flexible arrangements for their (typically) primary school-aged children.

The recent Australian community studies of post-separation care, largely confirm that a sizeable proportion of shared care families largely still fit this profile of relatively comfortable socio-economic backgrounds. In the two studies using nationally representative datasets, both the AIFS evaluation and SPRC study found that shared care parents were more likely to be older, have higher levels of educational attainment, have higher incomes, have been married, and to live in fairly close proximity such as within a 30 minute drive.<sup>41</sup> The age profiles were also consistent with Smyth et al's earlier work, with children in shared care most likely to be primary school age or early teenagers and with few under threes.<sup>42</sup>

The evidence on the quality of relationships is rather more attenuated. It would seem that compared to more traditional primary carer arrangements, shared care parents are more likely to communicate more often<sup>43</sup> and more likely to share decision-making.<sup>44</sup> However, this increased communication does not necessarily translate into, or stem from, better relationships, at least according to mothers. For instance, only fathers report lower levels of conflict in shared care compared to other arrangements<sup>45</sup> and only shared care fathers report that arrangements were more flexible than primary care.<sup>46</sup> On some key relationship issues – how parents get along with each other, frequency of disagreements or anger and hostility – there were no differences at all

<sup>39</sup> B. Smyth, 'A 5-year retrospective of post-separation shared care research in Australia' (2009) 15 *Journal of Family Studies* 36, at p 54.

<sup>40</sup> B. Smyth (ed), *Parent-child contact and post-separation parenting arrangements*. Research Report No 9 (Australian Institute of Family Studies, Melbourne, 2004).

<sup>41</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at p 168; J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales 2010), at pp 21–32, 52–53.

<sup>42</sup> R. Kaspiew et al, *ibid*, at p 168; J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek, and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales, 2010), at pp 18, 52.

<sup>43</sup> R. Kaspiew et al, *ibid*, at pp 159–63, 169.

<sup>44</sup> J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales 2010), at p 33. 'Shared or nearly shared' is defined as 29%–71% of overnights.

<sup>45</sup> *Ibid*, at p 77.

<sup>46</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at pp 153–154.

between shared care and typically primary care arrangements for either mothers or fathers.<sup>47</sup> On some issues, notably the overall quality of parental relationships, mothers with primary care relationships were actually more positive than shared care mothers.<sup>48</sup>

One possible reason for the absence of clear relationship advantages of shared over primary care is that the shared care population picked up in community studies now includes a significant minority of higher conflict families rather than just the early adopters. On a range of indicators, approximately a quarter of the shared care co-parental relationships in the SPRC and AIFS studies were problematic, in some respects more so than primary mother arrangements. The SPRC study reports that 35% of mothers in shared or near shared care arrangements rarely, if ever, consulted the other parent on child-rearing matters.<sup>49</sup> The AIFS evaluation found that 16%–17% of shared care mothers reported 'lots of conflict' in the relationship.<sup>50</sup> Similarly the SPRC study found higher rates of conflict over money reported by shared care mothers than any other arrangements.

Further, a significant minority of shared care mothers report safety concerns.<sup>51</sup> In the AIFS evaluation nearly a quarter of shared care mothers reported having been physically hurt prior to the separation, nearly half reported concerns about the other parent's mental health and/or substance misuse and a fifth reported ongoing safety concerns.<sup>52</sup> Indeed in the AIFS evaluation, those with safety concerns were just as likely to have shared care than not have shared care.<sup>53</sup> The SPRC study found that a third of shared care mothers had some safety concerns and 6% had serious concerns.<sup>54</sup>

The two recent studies by the AIFS and SPRC provide clear evidence that there are at least two groups of shared care families: the classic co-operators and a group of more conflicted families. What is particularly frustrating is that neither study seeks to explore how these characteristics cluster together although it would seem likely that conflict and concerns would overlap in many cases. The studies also offer limited insights into the relationship between case characteristics and how families reached arrangements. The AIFS evaluation does establish that shared care mothers were the most likely group of any to report having used family law system processes. In that

<sup>47</sup> J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek, and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales 2010), at pp 33–34. 'Moderate' care is defined as 14%–28% overnights.

<sup>48</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at p 163.

<sup>49</sup> *Ibid*, at p 35.

<sup>50</sup> *Ibid* at p 163.

<sup>51</sup> J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek, and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales, 2010), at pp 77 and 80.

<sup>52</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at pp 164–167.

<sup>53</sup> *Ibid*, at p 233.

<sup>54</sup> J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek, and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales, 2010), at p 80.

study 12%–17% of shared care mothers had reached their arrangements using counsellors, mediators or dispute resolution services, 9%–13% by using lawyers and 4%–6% through the courts.<sup>55</sup> The study does not go further, however, in exploring the relationships between decision-making pathway and relationship quality and concerns. One suspects, however, that there is some considerable overlap between the shared care families who have used these services and shared care families who report conflictual or fearful relationships.

The only study that does map the different pathways into and through shared care is a 4 year longitudinal study by McIntosh et al.<sup>56</sup> Rather than the large national representative datasets of all separated families such as the AIFS evaluation and SPRC studies, the McIntosh et al mediation study is based on a smaller non-probability sample of high conflict parents who had used mediation in Australia. What is particularly interesting about this study is that not only does the study identify three different groups of families, but as a longitudinal study it is also able to explore different pathways and relationships over time. The McIntosh et al study demonstrates a clear selection effect where different types of families establish different types of shared care which, in turn, are associated with different longer-term outcomes. The three groups identified are:<sup>57</sup>

- A co-operative group who sustained shared parenting over 3–4 years. These families were in many respects similar to the classic co-operators identified by Smyth (2004). They were more likely to have higher income and education levels and more involved fathers prior to separation. They had entered mediation with lower levels of parental conflict and acrimony, higher levels of parental alliance, warmer father-child relationships, and higher levels of paternal parenting competence and paternal availability than other groups. Those positive relationships were also sustained over time.
- A 'rigid shared care' group, where the division of time was rigidly fixed from the start and continued with minimal flexibility. This group was more likely to have been involved in repeat litigation, had higher pre- and post-separation levels of conflict and acrimony, higher levels of mothers feeling threatened, lower levels of cooperation and lower levels of father regard for mothers' parenting skills.
- A 'formerly-shared care' group having moved to primary care. This group was characterized by low levels of father education, high mother acrimony and poor emotional availability of father at intake according to children. Further, both parents and children were dissatisfied with the shared care arrangement shortly after mediation and had greater rates of litigation before and after mediation.

### **DURABILITY: HOW STABLE ARE SHARED RESIDENCE ARRANGEMENTS?**

It is clear from the recent Australian research that many shared care arrangements are tried out on a temporary basis but do not endure long term. Most commonly, these

<sup>55</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at p 152.

<sup>56</sup> J. McIntosh, B. Smyth, M. Kelaher, Y. Wells and C. Long, *Post-separation parenting arrangements and developmental outcomes for infants and children. Collected Reports. Three reports prepared for the Australian Government Attorney-General's Department* (Attorney-General's Department, 2010). Note, the 2010 report includes three separate reports: a combined summary, a longitudinal study of mediation outcomes using a mediation sample and a study of the outcomes of shared care for young children using a nationally representative dataset.

<sup>57</sup> *Ibid*, at pp 73–74.

short-term shared care arrangements 'revert' to a more traditional pattern of primary mother care.<sup>58</sup> In the AIFS evaluation, for example, only 49% of shared time arrangements were still in place after 4–5 years, compared to 87% of primary mother care arrangements. There is some evidence in this study that equal shared care arrangements are more durable than 'unequal' shared care but even so only 60% of the former were still in place 4–5 years on.<sup>59</sup>

McIntosh et al's study gives some further insights into the durability of mediated shared care. In that study, shared care arrangements were also more likely to change than other arrangements, typically reverting to primary (mother) care. I noted above that the 'formerly shared care' group had higher levels of acrimony and litigation at intake and were dissatisfied with the shared care agreement. Interestingly, it was the new agreements for shared care brokered in mediation that were most fragile. Existing shared care arrangements which were simply reaffirmed in mediation were twice as durable as shared care arrangements established for the first time following mediation. McIntosh et al suggest that part of the reason for the higher rates of instability might be the 'logistical and relational challenges' associated with shared care.<sup>60</sup> I return to this below.

Although the numbers are very small, it is worth noting similar findings in my own UK in-court conciliation study.<sup>61</sup> Of nine parents reporting an agreement for shared residence, only five were still in place at follow up (6 months or 2 years post-conciliation). Only two of the nine were new shared care agreements achieved in conciliation and neither endured.

### **SATISFACTION: HOW HAPPY ARE PARENTS AND CHILDREN WITH CARE ARRANGEMENTS?**

A number of studies have reported on satisfaction with or perceived workability of shared care arrangements. As ever, interpreting the data is complex not least because there are multiple and potentially conflicting perspectives to consider. It is clear from a range of studies that satisfaction with, or perceived workability of, arrangements is less strongly related to the care arrangements than whether the informant is a mother, father or child and also the presence or absence of conflict or safety concerns.

A consistent theme across studies is that fathers with shared care are significantly more positive about arrangements than fathers with primary maternal care. In contrast, mothers with shared care are a little less positive than fathers and generally no more or

<sup>58</sup> B. Smyth, 'A 5-year retrospective of post-separation shared care research in Australia', (2009) 15 *Journal of Family Studies* 36, at pp 46–47; R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at pp 126–128; J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales, 2010), at pp 37–40.

<sup>59</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at pp 126–128; see also B. Smyth and L. Moloney, 'Changes in patterns of post-separation parenting over time: A brief review' (2008) 14 *Journal of Family Studies* 7; B. Smyth et al, 'Changes in patterns of post-separation parenting over time: Recent Australian data' (2008) 14 *Journal of Family Studies* 23.

<sup>60</sup> J. McIntosh, B. Smyth, M. Kelaher, Y. Wells and C. Long, *Post-separation parenting arrangements and developmental outcomes for infants and children. Collected Reports. Three reports prepared for the Australian Government Attorney-General's Department* (Attorney-General's Department: 2010), at p 12.

<sup>61</sup> L. Trinder, J. Connolly, J. Kellett, C. Notley and L. Swift, *Making contact happen or making contact work? The process and outcomes of in-court conciliation* (Department for Constitutional Affairs, 2006). Reanalysis of data.

less positive than mothers with primary care arrangements. In the AIFS evaluation 86%–89% of shared care fathers thought the arrangements were working for children, compared to 78% of fathers with primary mother care. In contrast, between 80%–82% of mothers were positive about shared care, mainly mother care or even daytime only contact.<sup>62</sup> The SPRC study produced very similar figures with again more fathers reporting that shared care was working for children than primary mother arrangements (77% v 47%), whilst mothers were again less positive about shared care than fathers and equally as positive about primary mother care (66% v 60.5%).<sup>63</sup>

The SPRC team conducted further analysis to explain why there was variation in positive ratings of arrangements. Apart from the gender of the parent, three factors were significant: concerns/violence, conflict and litigation.<sup>64</sup> In this study, shared care mothers who had safety concerns were twice as likely to report that arrangements were not working for children than primary care who had such concerns.<sup>65</sup> Put simply, where there is violence, or fear of violence, children do worse in shared care, according to mothers. Similarly, where conflict was low, mothers rated all types of arrangements equally highly, but where there was conflict, mothers with primary care reported that children did better than mothers with shared care.<sup>66</sup>

The final variable concerns whether arrangements were achieved through litigation, mediation/legal advice or informally agreed. Here the gendered nature of reporting is particularly stark. About 40% of mothers with shared care following litigation reported that it was not working for children. In clear contrast, only 5% of shared care litigating fathers reported that the arrangements were not working for children. Interestingly mothers who had litigated were equally pessimistic about arrangements, whether they were in shared care or primary mother care.<sup>67</sup> In contrast the 5% of fathers with litigated shared care were the most positive of any group, including fathers with informally agreed arrangements. McIntosh et al also found that shared care fathers were the most satisfied of all groups even where there were high levels of conflict and poor dispute management.<sup>68</sup>

This is a good point to introduce children's opinions on shared care. Unfortunately we have far less quantitative data from children than from their parents. There are some studies where young adult children of divorce report that, looking back, they would have liked shared care.<sup>69</sup> However, where children have actually experienced

---

<sup>62</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at pp 156–157.

<sup>63</sup> J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales, 2010), at pp 84–85. It should be noted, however, that the Parents' Survey had a very low 10% response rate.

<sup>64</sup> *Ibid*, at p 86.

<sup>65</sup> *Ibid*, at p 86.

<sup>66</sup> 57% of mothers reporting 'high conflict' were dissatisfied with shared care. *Ibid*, at p 95.

<sup>67</sup> *Ibid*, at pp 89–90.

<sup>68</sup> J. McIntosh, B. Smyth, M. Kelaher, Y. Wells and C. Long, *Post-separation parenting arrangements and developmental outcomes for infants and children. Collected Reports. Three reports prepared for the Australian Government Attorney-General's Department* (Attorney-General's Department, 2010), at p 47.

<sup>69</sup> For example, W. Fabricius and J. Hall, 'Young adults' perspectives on divorce: Living arrangements' (2000) 38 *Family and Conciliation Courts Review* 446; P. Parkinson, J. Cashmore and J. Single, 'Adolescents' views on the fairness of parenting and financial arrangements after separation' (2005) 43 *Family Court Review* 429.

shared care themselves, then the picture is much more complex. The key source here is the McIntosh et al study.<sup>70</sup> The strength of this study is that it has collected data from mothers, fathers and children from the same families enabling ready comparison of their different perspectives across four waves of data collection. The McIntosh et al study echoes the findings of the recent general population studies in that it was fathers who reported higher satisfaction than mothers. More specifically mothers in the McIntosh study were satisfied with flexible but not rigid shared care, whilst fathers were equally satisfied with rigid or flexible shared care.<sup>71</sup> Importantly, the study found that children in early adolescence were both less satisfied with shared care than their parents and less satisfied than children in all other types of arrangement. Children in rigid arrangements were most likely to be dissatisfied. Further, children in shared care were also more likely than children in other arrangements to report wanting to change the arrangement.<sup>72</sup> McIntosh et al conclude that 'equal or substantial sharing of time may in some circumstances be an arrangement better suited to parents than to children'.<sup>73</sup>

There are also some very interesting qualitative interview studies that explore children's experiences specifically of shared care. As qualitative studies they are based on small samples and are designed to develop themes and concepts rather than to test relationships between variables. Although studies have been conducted in a range of countries – the UK,<sup>74</sup> Norway<sup>75</sup> and Australia<sup>76</sup> – the messages are highly consistent both with one another and with McIntosh et al's quantitative study.

The qualitative studies clearly indicate that children's views of shared care are highly contingent upon the nature of arrangements. Shared care can work as both 'a pleasure' and 'a burden',<sup>77</sup> with some children finding shared care working for them whilst others, including siblings from the same family, finding it onerous or oppressive. The advantages of shared care from children's perspective can include maintaining a relationship with both parents and being 'fair' to each parent. The disadvantages can be having to constantly move back and forth, not having a single place to call home, leaving things behind and conflict between parents.<sup>78</sup> A longitudinal qualitative study of 30 British children identified three factors that distinguished successful and unsuccessful care arrangements, all relating to the quality rather than the quantity of

<sup>70</sup> J. McIntosh, B. Smyth, M. Kelaher, Y. Wells and C. Long, *Post-separation parenting arrangements and developmental outcomes for infants and children. Collected Reports. Three reports prepared for the Australian Government Attorney-General's Department* (Attorney-General's Department, 2010).

<sup>71</sup> *Ibid*, at pp 47, 49.

<sup>72</sup> *Ibid*, at pp 47–49.

<sup>73</sup> *Ibid*, at p 78.

<sup>74</sup> C. Smart, B. Neale and A. Wade, *The Changing Experience of Childhood: Families and Divorce* (Polity Press, 2001); C. Smart, 'Equal shares: rights for fathers or recognition for children?' (2004) 24 *Critical Social Policy* 484.

<sup>75</sup> G. Haugen, 'Children's perspectives on everyday experiences of shared residence' (2010) 24 *Children and Society* 112.

<sup>76</sup> J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek, and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales, 2010), at pp 111–138.

<sup>77</sup> G. Haugen, 'Children's perspectives on everyday experiences of shared residence' (2010) 24 *Children and Society* 112, at p 119.

<sup>78</sup> J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek, and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales, 2010), at pp 127–138.

relationships. The three factors were: (a) whether children's needs and wishes were prioritised or whether the arrangement was based on the needs and wishes of the parents; (b) whether the arrangements were flexible rather than rigid; and (c) whether the children felt equally 'at home' with both parents.<sup>79</sup> Some sense of the contrast between successful and unsuccessful arrangements is evident in the following two quotations from the British research. Here Holly reports having the 'emotional permission' from two supportive and relaxed parents to be able to adapt arrangements to suit her evolving needs:

Holly (aged 13): I think it's probably been more flexible ... More because I've chosen. Like it's not been as rigid that I go to my dad's on certain days because if there is something that I want to do then like sometimes it's arranged, changed or for whatever reason. I mean it's always been changed if one of my parents is busy, mostly my dad. But [laugh] I'm the one. [Emphasis added]

Jen [interviewer]: Right so what might happen now when you say it's more flexible?

Holly: Well it's basically the same ... But I mean if, like, I mean sometimes there are things that my dad is doing with people I know and, like, that I would be involved in, even though it not on the right night. And, like, if I want to go out on Sunday then I do, like, without my parents.<sup>80</sup>

In contrast, Jack is stuck in rigid arrangements more suited to his parents' needs rather than his own:

They share us half the time. They did that from when they first split up ... I think mum wanted to see us as often as she could and my dad has always wanted, thought it was right to have fifty-fifty, which in the end she agreed ... I do actually sometimes feel that I'd rather live at my mum's house most of the time, but I wouldn't really want to, after like spending like half my life seeing my dad, I wouldn't want to just stop now ... Because well if everything works out, I'll be leaving in a few years, anyway to go to Uni, so there's not much point ... because I'd feel really guilty and I wouldn't want to hurt anyone's feelings or anything ... They both try as hard as they can, but they end up having arguments and stuff ... It's like if my mum hasn't got everything ready to take to my dad's house, sometimes he gets angry and I think he just likes being in control most of the time ... And mum ends up getting quite upset about it ... I do think that if I could choose, if I had to choose which house I spend more time at, I think it would definitely be my mum's. (Jack, aged 15).<sup>81</sup>

Further, all qualitative studies in the field have clearly indicated that children are happier with arrangements where they have had some say and are able to influence arrangements and are unhappy where arrangements are imposed upon them and where they are unable to make changes. It is worth noting that in fact relatively few children do appear able to influence their own care arrangements. In a Norwegian

<sup>79</sup> C. Smart, 'Equal shares: rights for fathers or recognition for children?' (2004) 24 *Critical Social Policy* 487.

<sup>80</sup> *Ibid.*, at pp 487–488.

<sup>81</sup> *Ibid.*, at pp 490–491 [emphasis in original].

study, 55% of 527 equal time parents reported that arrangements had been determined solely by adults and that their children had had no influence at all on arrangements.<sup>82</sup>

### CHILD WELL BEING: WHAT IS THE RELATIONSHIP BETWEEN CARE ARRANGEMENTS AND CHILD WELL BEING?

Perhaps the most important question of all is whether shared care does promote or hinder children's adjustment.<sup>83</sup> Intuitively one would think that more time with a parent post-separation would be better for children. In fact, there is little, if any, evidence that the mere amount or frequency of contact is better or worse for children. In a comprehensive review Smyth notes:

'... the idea that a clear linear relationship exists between parenting time and children's outcomes (such that ever-increasing amounts of time necessarily leads to better outcomes for children) appears to lack an empirical basis.'<sup>84</sup>

Although the *quantity* of contact does not appear to be linked to adjustment, two meta-analyses<sup>85</sup> have found that the *quality* of parent-child relationships has a significant effect on child well being.<sup>86</sup> In the Amato and Gilbreth study, children were doing better where non-resident parents adopted an authoritative (rather than authoritarian or permissive) parenting style and where children felt close to their non-resident parent. Children did not do any better or worse where they had more (or less) frequent contact. Whilst a certain amount of time will be needed to enable a quality relationship to be developed or maintained, it is what parents do with that time that is critical. Whiteside and Becker underscore the importance of parent-parent and parent-child relationship quality rather than time per se, noting that in relation to young children:

'Neither the shape of the care giving network nor the time-sharing schedule has the most potent effects on children's development. Rather, the quality of the

<sup>82</sup> K. Skjørten and R. Barlindhaug, 'The involvement of children in decisions about shared residence' (2007) 21 *International Journal of Law, Policy and the Family* 373, at p 378.

<sup>83</sup> Typically measured using a standardised instrument such as Goodman's Strengths and Difficulties Questionnaire (SDQ). See R. Goodman, 'Psychometric properties of the Strengths and Difficulties Questionnaire (SDQ)' (2001) 40 *Journal of the American Academy of Child and Adolescent Psychiatry* 1337.

<sup>84</sup> B. Smyth, 'A 5-year retrospective of post-separation shared care research in Australia' (2009) 15 *Journal of Family Studies* 36, at p 44.

<sup>85</sup> A meta-analysis is a statistical synthesis of multiple separate research studies.

<sup>86</sup> P. Amato and J. Gilbreth, 'Nonresident fathers and Children's well-being: A meta-analysis' (1999) 61 *Journal of Marriage and the Family* 557; M. Whiteside and B. Becker, 'Parental factors and the young child's postdivorce adjustment: A meta-analysis with implications for parenting arrangements' (2000) 14 *Journal of Family Psychology* 5. A third meta-analysis is sometimes cited in support of the idea that shared residence promotes child well being. The study by R. Bauserman ('Child adjustment in joint-custody versus sole-custody arrangements: A meta-analytic review' (2002) 16 *Journal of Family Psychology* 91) reported that children in shared custody had fewer emotional and behavioural problems and higher self-esteem than children in sole custody. However that study has been subject to extensive criticism as it fails to distinguish between families with joint legal custody (ie PR) and joint physical custody (ie shared residence). It is well established that parents who choose joint legal custody are more cooperative and less conflictual than parents with sole legal custody and consequently their children tend to have better adjustment. In effect, by comparing joint (including some physical) custody and sole custody the Bauserman meta-analysis is probably comparing lower and higher conflict families with predictable results.

parental alliance and the parents' warmth, sensitivity, good adjustment, and discipline style make the difference between a well-adjusted child and one who is angry, scared, or limited in cognitive and social skills.<sup>87</sup>

The recent Australian studies of shared care confirm that there is no clear relationship between time and child well being and also point to similar relationship factors. The AIFS evaluation used two different datasets and four different informants (mothers, fathers, children and teachers) to explore the relationship between child well being and care patterns in nationally representative studies. Only on fathers' reports were children in shared care doing better than children in primary mother care (using the Longitudinal Study of Separated Families (LSSF) W1 dataset of recently separated families). In contrast, on mothers' reports there was no difference in child well being between shared care and primary mother care.<sup>88</sup> Nor was there any relationship between well being and care patterns according to children's reports using the Longitudinal Study of Australian Children (LSAC) wave 1 to 3 datasets. Reports from independent observers – teachers – indicate that children seemed to be doing best in primary mother care.<sup>89</sup> The SPRC study produced a similar picture. Using the LSAC dataset they found that initial differences between child well being – notably more positive outcomes for shared care – disappeared after controlling for socio-economic, maternal characteristics and family process variables such as conflict.<sup>90</sup>

The recent studies have looked in more detail at some of the relationship factors that might impinge on welfare – conflict and fear/domestic violence. As might be expected, safety concerns were associated with poorer child well being regardless of arrangements. However, the AIFS evaluation found that where mothers had safety concerns they were more likely to report poorer outcomes for children in shared care than if the children were living primarily with them.<sup>91</sup> In contrast, the study found no such relationship between well being and ongoing high conflict.<sup>92</sup>

Rather than using large community studies with a majority of co-operative or friendly parents, a small number of studies have looked specifically at the outcomes for children in higher conflict and litigating populations. Two studies have explored contact frequency in litigating populations. In Janet Johnston's study of very high and

<sup>87</sup> M. Whiteside and B. Becker (2000), *ibid*, at p 23.

<sup>88</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at p 267.

<sup>89</sup> *Ibid*, at pp 272–273. Somewhat surprisingly the Kaspiew report does not discuss the findings of the teacher report data.

<sup>90</sup> J. Cashmore, P. Parkinson, R. Weston, R. Patulny, G. Redmond, L. Qu, J. Baxter, M. Rajkovic, T. Sitek and I. Katz, *Shared Care Parenting Arrangements since the 2006 Family Law Reforms: Report to the Australian Government Attorney-General's Department* (Social Policy Research Centre, University of New South Wales, 2010), at p 64.

<sup>91</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at pp 269–270. There is, of course, a high incidence of safety concerns in litigating populations in England. For example, in the recent case file analysis by Hunt and Macleod, 54% of resident parents raised concerns about 'serious welfare issues', including domestic violence (34%); child abuse or neglect (23%); alcohol abuse (21%); drug abuse (20%) and mental illness (13%). J. Hunt and A. Macleod, *Outcomes of applications to court for contact orders after parental separation or divorce* (Ministry of Justice, 2008), at p 9. In a sample of 137 resident parents attending conciliation, 54% reported a fear of violence – Trinder et al, *ibid*, at p 33.

<sup>92</sup> *Ibid*, at pp 269–270. Although the researchers note that the measures of high conflict were 'quite broad' at p 273.

chronically conflictual families in California, more frequent contact was associated with poorer child outcomes.<sup>93</sup> In my own study of litigating parents in England, the best predictors of child well being were adult well being and whether there were concerns about the other parent's parenting. Children with more contact were doing no better or worse than children with less contact.<sup>94</sup>

The McIntosh et al study is particularly helpful as it looks specifically at different care arrangements in a higher conflict mediation/litigation sample over 4 years. The study found no relationship between care pattern and children's overall or global mental health.<sup>95</sup> However, there were some indications that shared care might in itself be problematic for children in a higher conflict population, although the quality or rigidity of the arrangements is important. In terms of the specific problems associated with shared care per se, McIntosh et al found that children who had lived in sustained shared care arrangements for 4 years had significantly higher hyperactivity/inattention scores than all other arrangements including no/rare contact, and this was particularly so for boys and for rigid arrangements.<sup>96</sup> The study also found significantly higher rates of emotional symptoms in children in rigid, unresponsive care arrangements whether primary or shared.<sup>97</sup> It is worth noting that the study also identified a group of children who had ceased contact who were doing better than previously.

The study also gives some insights into why the shared care children, particularly in rigid arrangements, might be under more stress. The study reported high levels of conflict in the shared care groups, at a higher level than all other groups even controlling for initial levels of conflict. Children were caught up in this conflict, with shared care children more likely to report being caught in the middle of conflict than other groups.<sup>98</sup> Thus shared care in this high conflict population does not ease conflict but appears to perpetuate it with the consequence that children are more likely to report being caught in the crossfire. Nor were these children protected by a better relationship with their father. On child reports, more contact in itself did not lead to a better father-child relationship over time, rather it was the nature of the father-child relationship at intake that mattered.<sup>99</sup> In other words, more contact did not lead to a better relationship, a better relationship led to more contact. The differential pathways are effectively summarised by McIntosh et al thus:

'family pathways began from different pragmatic places, were differentially resourced in psychological and interpersonal terms, and then diverged in a fairly predictable manner over the years from those points of origin. For example, children entering rigid forms of sharing, usually via court-imposed pathways, had

<sup>93</sup> J. Johnston, M. Kline and J. Tschann, 'Ongoing postdivorce conflict in families contesting custody: Do joint custody and frequent access help?' (1989) 59 *American Journal of Orthopsychiatry* 576; J. Johnston, 'Research Update: Children's adjustment in sole custody compared to joint custody families and principles for custody decision making' (1995) 33 *Family and Conciliation Courts Review* 415.

<sup>94</sup> L. Trinder, J. Kellett and L. Swift, 'The relationship between contact and child adjustment in high conflict cases after divorce or separation' (2008) 13 *Child and Adolescent Mental Health* 181.

<sup>95</sup> J. McIntosh, B. Smyth, M. Kelaher, Y. Wells and C. Long, *Post-separation parenting arrangements and developmental outcomes for infants and children. Collected Reports. Three reports prepared for the Australian Government Attorney-General's Department* (Attorney-General's Department, 2010), at p 60. Overall mental health was measured using the 'total difficulties' score of the Strengths and Difficulties Questionnaire.

<sup>96</sup> *Ibid*, at pp 62–65.

<sup>97</sup> *Ibid*, at pp 60–62. Internalising symptoms are those linked with depression and anxiety.

<sup>98</sup> *Ibid*, at pp 56–57.

<sup>99</sup> *Ibid*, at p 78.

a troubled trajectory to begin with, and carried different burdens, of which unresponsive and unwanted care arrangements became yet another.<sup>100</sup>

The McIntosh study does raise some concerns about the well being of children in all forms of high conflict shared care. However it is the children in rigid shared care arrangements that cause most concern. Of course, these forms of rigid arrangements are far more likely to result from court orders. Taken overall the McIntosh et al study underlines the importance of looking at the *quality* of parent-parent and parent-child relationships rather than focusing on time allocations. The McIntosh et al study is particularly helpful in enabling some understanding of selection effects and outcomes. As the study concludes 'Children in rigid shared care arrangements appeared to have troubled beginnings; their care arrangements did not assist recovery'.<sup>101</sup> The researchers suggest that the problematic elements of shared care in these cases result from ongoing and more frequent exposure to toxic interpersonal dynamics, the diminished responsiveness of each parent and the greater scope for controlling and abusive behaviour.

## YOUNGER CHILDREN

The final issue to consider is the question of the impact of overnights and shared care on young children under the age of four whether in co-operative or conflicted families. The question of overnights for young children has been a highly contested issue amongst developmental psychologists over the last decade.<sup>102</sup> On one hand Kelly and Lamb have emphasised the importance of overnights to establish and/or maintain meaningful relationships between infants and the non-resident parent. Other researchers have argued that frequent overnights should be avoided where parental conflict is high, citing a study by Solomon and George<sup>103</sup> that found disproportionately high rates of insecure attachments in 126 infant-mother dyads where the infants had one overnight per week with their fathers.

The most recent and focused study on the question is another Australian study by McIntosh and colleagues.<sup>104</sup> This used the large, nationally representative, Longitudinal Study of Australian Children (LSAC) dataset to examine overnight care patterns and psycho-emotional development in infants and young children in a community population. For 4–5 year olds the study found no difference between emotional and behavioural regulation outcomes between shared care, primary care and rare/no

<sup>100</sup> J. McIntosh, B. Smyth, M. Kelaher, Y. Wells and C. Long, *Post-separation parenting arrangements and developmental outcomes for infants and children. Collected Reports. Three reports prepared for the Australian Government Attorney-General's Department* (Attorney-General's Department, 2010), at p 76.

<sup>101</sup> *Ibid*, at p 76.

<sup>102</sup> J. Solomon and C. George, 'The development of attachment in separated and divorced families: Effects of overnight visitation, parent and couple variables' (1999) 1 *Attachment and Human Development* 2; J. Kelly and M. Lamb, 'Using child development research to make appropriate custody and access decisions' (2000) 38 *Family & Conciliation Courts Review* 297; J. Solomon and Z. Biringen, 'The continuing debate about overnight visitation: Another look at the developmental research: Commentary on Kelly and Lamb's 'Using child development research to make appropriate custody and access decisions for young children'' (2001) 39 *Family Court Review*, 355; M. Kline-Pruett, R. Ebling and G. Insabella, 'Critical aspects of parenting plans for young children' (2004) 42 *Family Court Review* 39.

<sup>103</sup> J. Solomon and C. George (1999), *ibid*.

<sup>104</sup> J. McIntosh, B. Smyth, M. Kelaher, Y. Wells and C. Long, *Post-separation parenting arrangements and developmental outcomes for infants and children. Collected Reports. Three reports prepared for the Australian Government Attorney-General's Department* (Attorney-General's Department, 2010). Note this is the second report entitled 'Study 2: Overnight care patterns and psycho-emotional development in infants and young children' (pp 85–169) included in the volume of three collected reports.

contact. For these kindergarten age children it was parental conflict and parental warmth that were linked to outcomes, not the parenting arrangements.<sup>105</sup> For younger children the findings were very different. The authors reported that shared care was associated with 'a cluster of developmental problems indicative of significant stress in the young child'.<sup>106</sup> Specifically, where infants under two had one or more overnights a week they found higher rates of irritability and vigilant efforts to monitor the presence and maintain proximity with the primary parent compared to no, rare or monthly overnights.<sup>107</sup> In older infants aged 2–3 years in shared care arrangements (35% overnights), the study found higher rates of problem behaviours (eg crying or hanging onto a parent when leaving, refusing to eat and hitting, biting or kicking a parent) and poor persistence in activities and exploration compared to primary care and rare/no overnights.<sup>108</sup> The researchers argue that the findings are consistent with attachment theory in that repeated absence from the primary caregiver in very young children is uniquely stressful and beyond the cognitive ability to predict, comprehend or resolve.<sup>109</sup>

The McIntosh et al study is significant in that it identifies a 'normative risk' of overnights for young children in relatively low risk non-court samples where parents have what McIntosh and colleagues call the 'relationship equipment' to co-operate.<sup>110</sup> In court samples McIntosh et al note that young children in shared care may be exposed not only to these normative risks but also 'additional risk through the domino impacts of parental conflict, and pre-occupied or otherwise compromised parenting'.<sup>111</sup> As a result the researchers urge caution in the use of frequent overnights for under fours. This message is of particular relevance to children involved in proceedings where a substantial minority of children are under 4 years of age.<sup>112</sup>

### THE OPERATION OF A SHARED RESIDENCE/CARE PRESUMPTION

The Australian studies also give some insight into how parents and professionals within the family justice system respond to the introduction of a shared care presumption. This is of potential relevance in a British context where fathers' groups have long campaigned for such a presumption and where a Shared Parenting Bill is under consideration.

One of the most interesting findings is the difficulty that Australian parents had in understanding the law and its shared care provisions.<sup>113</sup> Only 18% of lawyers reported clients easily understood the difference between equal parental responsibility and equal time with even less understanding of the abuse and best interests exceptions to the equal parental responsibility presumption.<sup>114</sup> This lack of understanding meant that

<sup>105</sup> Ibid, at pp 139–142.

<sup>106</sup> Ibid, at p 156.

<sup>107</sup> Ibid, at pp 131–133.

<sup>108</sup> Ibid, at pp 134–137.

<sup>109</sup> Ibid, at p 144.

<sup>110</sup> Ibid, at p 157.

<sup>111</sup> Ibid, at p 157

<sup>112</sup> The average age of the index child in Hunt and Macleod's recent English case file study was 5.5 years. J. Hunt and A. Macleod, *Outcomes of applications to court for contact orders after parental separation or divorce* (Ministry of Justice, 2008), at p 8.

<sup>113</sup> The legislation contains a presumption of equal shared parental responsibility, but courts are only obliged to consider equal or substantial or significant time. See Family Law Act 1975 (Cth), s 65DAA, as inserted by the Family Law Amendment (Shared Parental Responsibility) Act 2006 (Cth).

<sup>114</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at pp 207–209.

arguments were not being put forward to rebut the presumption even where a case could be made.<sup>115</sup> Further, it was clear that many parents, particularly fathers, had interpreted the statute as meaning equal time. Lawyers reported that 65% of fathers and 32% of mothers expected equal time.<sup>116</sup> Qualitative data indicated that these expectations could be difficult to manage and it could be hard to focus parents, especially fathers, on developing arrangements that were developmentally appropriate for children. Lawyers were reported to be particularly concerned about privately ordered or mediated cases that were settled in the shadow of a law but based on an inaccurate understanding of the law.<sup>117</sup>

More generally, whilst 80% of family lawyers strongly or mostly supported the general principle of shared parental responsibility<sup>118</sup> there was also a strong sense that the policy framework did not focus sufficiently on children's needs. Lawyers suggested that the shared care presumption can deflect attention from or inhibit parties from raising concerns about violence.<sup>119</sup> Indeed, whilst a very large majority (86%) of lawyers reported that the child's right to a meaningful relationship with both parents was given adequate priority within the system, only 55% thought that protection from harm was given sufficient priority.<sup>120</sup> There is now significant professional support for the view that the family justice system must improve its response to addressing safety issues, including two recent reports to the Australian Attorney General<sup>121</sup> and two empirical studies of the experiences of service users.<sup>122</sup>

Aside from concerns about the marginalisation of violence, the lawyers in the AIFS evaluation expressed doubts about whether the new framework focused on children's needs. In the study only 20% of lawyers reported that the current policy framework enables parents to reach developmentally appropriate arrangements for children and only 30% of lawyers thought that the family reforms have benefited children.<sup>123</sup> According to lawyers, the main beneficiaries of the reforms have been fathers, with 71% reporting that the reforms favoured fathers over mothers.<sup>124</sup> Qualitative interviews with judges and lawyers reinforced these messages with a perception that post-reform

---

<sup>115</sup> Ibid, at pp 209–210.

<sup>116</sup> Ibid, at pp 210–211.

<sup>117</sup> Ibid, at pp 212–214

<sup>118</sup> Ibid, at pp 206–207. Note that the question refers only to parental responsibility, not equal time.

<sup>119</sup> Ibid, at pp 250.

<sup>120</sup> Ibid, at pp 235–236.

<sup>121</sup> R. Chisholm, *Family Courts Violence Review: A Report By Professor Richard Chisholm* (Attorney General's Department, 2009). Available at [http://www.ag.gov.au/www/agd/agd.nsf/Page/Families\\_FamilyCourtsViolenceReview](http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_FamilyCourtsViolenceReview); Family Law Council, *Improving Responses to Family Violence in the Family Law System*, (Attorney General's Department, 2009). Available at [http://www.ag.gov.au/www/agd/agd.nsf/Page/FamilyLawCouncil\\_Publications\\_ReportstotheAttorney-General\\_FamilyViolenceReport](http://www.ag.gov.au/www/agd/agd.nsf/Page/FamilyLawCouncil_Publications_ReportstotheAttorney-General_FamilyViolenceReport).

<sup>122</sup> D. Bagshaw, T. Brown, S. Wendt, A. Campbell, E. McInnes, B. Tinning, B. Batagol, A. Sifris, D. Tyson, J. Baker, P. Fernandez Arias, *Family Violence and Family Law in Australia: The Experiences and Views of Children and Adults from Families who Separated Post-1995 and Post-2006* (Attorney-General's Department, 2010). See also L. Laing, *No way to live: Women's experiences of negotiating the family law system in the context of domestic violence* (University of Sydney and Benevolent Society, 2010) available at <http://ses.library.usyd.edu.au/bitstream/2123/6255/1/No%20way%20to%20live%20final%20report.pdf>.

<sup>123</sup> R. Kaspiew, M. Gray, R. Weston, L. Moloney, K. Hand, L. Qu and the Family Law Evaluation Team, *Evaluation of the 2006 family law reforms* (Australian Institute of Family Studies, Melbourne, 2009), at pp 214–215, 216–217.

<sup>124</sup> Ibid, at pp 219–220.

negotiations and litigations had become more focused on parents' rights and fairness rather than children's needs and interests.<sup>125</sup>

## **CONCLUSION AND IMPLICATIONS: MAKING DECISIONS FOR AND WITH CHILDREN**

Research studies conducted over the last few years have produced a wealth of detailed, complex but also generally consistent findings on the patterns and outcomes of shared residence or 'shared care'. The key points to emerge are as follows:

- Shared care is increasing slowly yet steadily but remains relatively uncommon with the majority of children continuing to live primarily with their mothers.
- Following the Australian family law reforms in 2006, the biggest growth area in shared care has been amongst the mediated and litigated population, with approximately a third of litigated cases resulting in shared care.
- Shared care arrangements tend to be less durable or long-lasting than other arrangements, mostly converting to primary maternal care. 'Equal' or 50/50 arrangements are more likely to last than 'unequal' (35%–65% allocations).
- The profile of shared care families has changed from the classic 'early adopters' of shared care who were typically economically-advantaged and generally co-operative and flexible parents who had opted into shared care.
- There are now at least two or three groups of shared care parents: the classic co-operators; a rigid shared care group often achieved through litigation with high levels of pre- and post-separation conflict; and a higher conflict group that try shared care and revert to other patterns.
- As a whole, shared care parents are older and more economically secure than non-shared care parents.
- Shared care parents tend to communicate and share decision-making more than those with primary mother arrangements but are not any more, and sometimes less friendly, than those with primary care arrangements. A significant minority of shared care mothers report a lot of conflict and have serious concerns about safety and violence.
- Fathers have high levels of satisfaction with shared care, even litigated and rigid arrangements. Mothers are less satisfied than fathers and have high levels of dissatisfaction with litigated and rigid arrangements and where there are conflict and safety issues. Children are less satisfied with shared care than their parents, particularly where arrangements are rigid and inflexible, focus on adult rather than child needs and where they have little say in arrangements.
- In community populations there is no clear relationship between shared care and child well being. More time with each parent does not mean better outcomes for children. Rather it is the quality of relationships surrounding the child, especially sensitive and authoritative parenting, the parental alliance and absence of safety concerns that seem important.
- In high conflict populations there is some evidence that shared care is associated with hyperactivity, especially for boys and those with rigid arrangements. Children in rigid shared and primary mother care had higher rates of internalising symptoms. In community populations, ongoing safety concerns were strongly associated with poorer outcomes for children in shared care according to mothers.
- There are ongoing concerns about overnights and shared care for young

---

<sup>125</sup> *Ibid*, at pp 216–217.

children. A recent study based on a national random sample of young children found a cluster of developmental problems for infants with weekly overnights and young children aged 2–3 with shared care, but not for older children.

- It seems that early or pre-existing parent or family characteristics predict subsequent pathways and outcomes. Co-operative parents tend to develop flexible shared care arrangements with positive outcomes. High conflict parents tend to develop rigid arrangements, often through litigation, that are associated with poorer child adjustment and lower levels of child satisfaction. In mediated arrangements shared care seemed to maintain or exacerbate rather than reduce conflict over time.

The recent Australian experience provides a clear warning against a statutory presumption based on any timeshare arrangement, and particularly not one based on shared care. The research reviewed here does not support the view that by simply dividing children's time between their parents that children do better or are happier. What matters more is the quality of parenting and the ability of parents to focus on their children's needs, regardless of the quantity of the child's time that they secure. However, by sending policy messages that shared care is the best option, what has occurred is a shared care paradox where the greatest expansion of shared care has been in precisely those families where shared care is least likely to work and most likely to cause most problems for children.<sup>126</sup> The evidence is particularly strong that rigid shared care arrangements which are most likely to result from court orders may be strongly appreciated by fathers but are not liked by children and may do harm. Contrary to the hopes of some, it would seem that shared care arrangements in high conflict cases are not transformative and instead may merely increase and perpetuate damaging conflict.

In Australia, there is strong support for reform of the legislation amongst a wide body of legal professionals and academics, although the intense political pressure exerted by fathers' groups means that such a change will be controversial.<sup>127</sup> Ironically, in the UK, legislators are in a better position to benefit from the insights from the Australian research. If anything the messages from the Australian studies underline the importance of the core principles of the Children Act 1989, namely that the child's welfare shall be the paramount consideration and that the focus must be on understanding the particular needs of an individual child, understood in the light of the child's wishes and feelings. In an English context, shared residence might be a good option for some children involved in proceedings but the Australian research quite clearly indicates that it should not be presumed to be the best option, all else being equal. The lack of a shared residence presumption will not inhibit the development of positive shared residence. Co-operative parents have always had the ability and the capacity to make their own flexible and child-centred arrangements for sharing care and will long continue to do so without a statutory mandate.

<sup>126</sup> Of course, in an English context a shared residence presumption would provide a further incentive for litigation in that it would offer an additional symbol for parents to fight over, see P. Harris and R. George, 'Parental responsibility and shared residence orders: parliamentary intentions and judicial interpretations' [2010] CFLQ 151.

<sup>127</sup> See, for example, R. Chisholm, *Family Courts Violence Review: A Report By Professor Richard Chisholm* (Attorney General's Department, 2009); H. Rhoades, 'Revising Australia's parenting laws: a plea for a relational approach to children's best interests' [2010] CFLQ 172; B. Fehlberg, 'Shared care laws damaging many children' reported in *Sydney Morning Herald*, 26 August 2010; Patrick Parkinson and Rick O'Brien quoted in A. Horin, 'Next government must confront the dangers in family law reforms' reported in *Sydney Morning Herald*, 28 August 2010.

Nonetheless, over the coming years it is likely that increasing numbers of litigants will seek orders giving them substantially shared residence. What factors might inform any assessment or decision in accordance with s 1(1) of the 1989 Act? The McIntosh et al report helpfully identifies four pieces of 'equipment' required to make shared care work for children. These are:<sup>128</sup>

- (1) Socio-economic equipment: education and employment resources.
- (2) Relationship equipment: including nurturing parent-child relationships and supportive relationships between parents. Elsewhere McIntosh et al refer to 'adequate trust and regard, ability to make joint decisions, flexibility, passive cooperation, effective containment of conflict'.<sup>129</sup>
- (3) Maintenance equipment: or parent 'pragmatic resources', including flexibility and a desire to make the arrangement work.
- (4) Developmental equipment: taking account of 'developmental stage', ie for under fours, as a factor regardless of socio-economic, relationship and maintenance equipment.

Two other key messages emerge from the research studies. First is the critical importance of enabling children to have some influence over arrangements, consistent with the first item on the welfare checklist.<sup>130</sup> In this respect it is of concern that only a minority of children are directly consulted in litigated cases in England.<sup>131</sup> Current resource constraints may make it even harder for children to have their voices heard.

The second key research message is that it is typically not the arrangements themselves that matter, whether shared or not shared, but how parents manage these relationships. Whilst courts inevitably focus on timetables it is critical that every effort is made to focus on the quality of relationships that matter to children. The gradual development of a range of supportive psychoeducational interventions, including the parent information programmes (PIPs) available to litigating parents as contact activities under the Children and Adoption Act 2006, is a very welcome development in that respect.<sup>132</sup>

---

<sup>128</sup> J. McIntosh, B. Smyth, M. Kelaher, Y. Wells and C. Long, *Post-separation parenting arrangements and developmental outcomes for infants and children. Collected Reports. Three reports prepared for the Australian Government Attorney-General's Department* (Attorney-General's Department, 2010), at p 8.

<sup>129</sup> J. McIntosh, 'Legislating for shared parenting: exploring some underlying assumptions' (2009) 47 *Family Court Review* 397.

<sup>130</sup> Children Act 1989, s 1(3)(a).

<sup>131</sup> V. May and C. Smart, 'Silence in court? – hearing children in residence and contact disputes' [2004] CFLQ 305, at p 308. The study of 430 contact and residence case files found that only a quarter of children had been directly consulted by professionals, rising to just half of all children where a welfare report had been ordered.

<sup>132</sup> For a description of the parent information programmes and initial parent reaction see M. Dancey and R. Jones 'Contact Activities: Parenting Information Programmes' [2010] Fam Law 1101.

**Appendix: The Research Studies**

Authors	Data source	Jurisdiction	Sample	Design	Sample size	Study flaws
Amato & Gilbreth 1999	Meta analysis of multiple studies	International, mostly US	Published studies that include child in father-absent households and measure of father involvement and child well being	Meta analysis	63 separate studies and 100 independent samples	
Bauserman 2002	Meta analysis of multiple studies	International, mostly US	Published studies and theses including children in joint legal or physical custody or sole custody and measure of psychological or behavioural adjustment	Meta analysis	33 separate studies, totaling 1,846 children in sole-custody, 814 in joint-custody and 251 intact families	22:33 studies were not peer reviewed. The study conflates joint legal custody and physical custody
Cashmore et al 2010 (SPRC study)	LSAC W1 (2004), W2 (2006)	Australia	National random sample of parents of 5,000 young infants and 5,000 children aged 4–5	Longitudinal panel study		
	Parents survey	Australia	CSA (84%) and solicitor (16%) clients (samples combined)	Cohort	1,028: 597 mothers and 429 fathers, 43% shared care, 26% formerly shared care, 21% not shared care	Very low (10%) response rate.
	Children and young people survey	Australia	Convenience sample via 'problem-oriented' children's websites	Cohort	140, 76% girls, 24% boys, median age 15, 20% (c28) in shared care	Convenience sample of older teenagers, heavily skewed towards girls
Haugen 2010	Families after divorce	Norway	Qualitative sample drawn from larger regional survey	Qualitative interview	15 children (5 girls, 10 boys) in shared care	
Kaspiew et al 2009 (AIFS Evaluation)	LSSF W 1	Australia	National random sample of 10,000 families with child under 18 separating after 2006	Longitudinal panel study		

Authors	Data source	Jurisdiction	Sample	Design	Sample size	Study flaws
	LSAC W1 (2004)	Australia	National random sample of parents of 5,000 young infants and 5,000 children aged 4–5	Longitudinal panel study		
McIntosh et al: Study 1 2010	Children in Focus study	Australia	Referral to mediation services	Longitudinal panel study – 4 waves	131 families with 260 children (parent and child data)	
McIntosh et al: Study 2 2010	LSAC W1 (2004)	Australia	National random sample of parents of 5,000 young infants and 5,000 children aged 4–5	Longitudinal panel study	Parents of 248 (63 SC) infants, 1802 (97 SC) 2–5 year olds	
Peacey and Hunt 2009	ONS Omnibus Survey	E&W	Community (div/sep RP and NRP)	Cohort	559 (169 NRP, 390 RP)	NRP strongly under-represented
Smart et al 2001; Smart 2004	ESRC co-parenting study	E&W	Qualitative sample through lawyers, advertising	Qualitative longitudinal interview	30 children/YP at round one, 21 3–4 years later	