dca

Department for
Constitutional Affairs
Justice, rights and democracy

Making contact happen or making contact work?

The process and outcomes of in-court conciliation

Liz Trinder, Jo Connolly, Joanne Kellet
Caitlin Notley and Louise Swift
University of East Anglia

DCA Research Series 3/06
March 2006

Making contact happen or making contact work?

The process and outcomes of in-court conciliation

Liz Trinder, Jo Connolly, Joanne Kellett,
Caitlin Notley and Louise Swift

University of East Anglia

The Research Unit, Department for Constitutional Affairs, was formed in April 1996. Its aim is to develop and focus the use of research so that it informs the various stages of policy-making and the implementation and evaluation of policy.

First Published 2006

ISBN 1 84099 069 4

Acknowledgements

Negotiating access for this project required considerable effort by a number of people from different agencies. Our particular thanks go to the Department for Constitutional Affairs staff, especially Sally Attwood and Mavis Maclean. The CAFCASS teams and HM Courts Service staff in our three study areas were exceptionally helpful in enabling us to make contact with parents and we are very grateful to them. We are grateful also to all the Family Court Advisors, lawyers and District Judges who were interviewed for the research and thereby greatly enhanced our understanding of in-court conciliation. Our greatest thanks go to the two hundred and fifty parents who took the time to share their experiences with us during what is undoubtedly a difficult time for them.

Authors

All the authors are from the University of East Anglia in Norwich. The first four are members of the Centre for Research on the Child and Family at UEA.

Dr Liz Trinder is a Senior Lecturer. She has a long-standing interest in post-separation parenting and has conducted a number of studies and published widely in this area. She has a broader interest in the issue of family membership and family boundaries and has also researched and written on adoption reunion.

Jo Connolly is a Senior Research Associate at UEA. She has been involved in a number of studies exploring family transitions, including post-separation contact, contact with imprisoned fathers and adoption support services.

Joanne Kellett is a Research Associate at UEA. As well as post-separation families, she has recently been researching child welfare services for minority ethnic families and before that conducted a major study of first-time fatherhood.

Dr Caitlin Notley is a Research Associate at UEA. Her research interests include post-separation parenting and the socio-legal framework. She has an ongoing interest in qualitative methodologies.

Dr Louise Swift is a chartered statistician and has collaborated and advised on a wide range of research projects in the sciences and social sciences. She is based in the School of Medicine, Health, Policy and Practice at UEA.

Disclaimer

Contents

Tables

Figures

Executive Summary

In-court conciliation is a form of dispute resolution used in the early stages of contested private law proceedings, such as contact applications. The purpose of conciliation is usually to help parties negotiate an agreement about the disputed matter without the need for further legal intervention. Conciliation is typically a brief intervention on court premises involving CAFCASS officers, although the precise form varies considerably between courts. There are now plans to make in-court conciliation available in all courts as part of the Private Law Programme.

This report presents the findings from a study on the Process and Outcomes of In-Court Conciliation, funded by the Department for Constitutional Affairs.

Aim of the study

The aim of the study was to identify the *overall* effectiveness of in-court conciliation in contact cases as well as the *relative* effectiveness of three contrasting models of conciliation. In other words the study sought to identify whether conciliation 'works' and which model 'works' best. Effectiveness or 'working' was measured by the following indicators:

- agreement rate
- satisfaction with the agreement
- satisfaction with the process overall and with specific process components
- agreement durability
- relitigation and further professional intervention
- change (or improvement) in contact patterns, satisfaction with arrangements, contact problems, shared decision making and parent and child wellbeing

Methodology

The main study consisted of a longitudinal quantitative survey of parents who had attended in-court conciliation. Parents were initially recruited at conciliation appointments at the three different sample sites. The response rate was approximately 67%, resulting in a baseline sample of 125 mothers and 125 fathers. A baseline telephone interview was conducted within a few days of the conciliation appointment. At follow up, between six and nine months later, 70% of the baseline sample were re-interviewed. The parent study was supplemented with qualitative interviews with district judges, lawyers and CAFCASS officers from the three areas.

The three models or approaches to conciliation

Conciliation varies widely across the country. The three approaches to conciliation included in this study were as follows:

- Essex – parents attend a scheduled one hour appointment with the CAFCASS officer then report back briefly to a district judge (low judicial control)
- Principal Registry of the Family Division (PRFD) – the district judge leads negotiations in a court room with lawyers actively negotiating (high judicial control)
- Suffolk/Cambridgeshire (Cambs) – the district judge initiates the process in chambers, parties go out to negotiate with CAFCASS then report back (mixed)

Findings: The Nature of the Cases

- Families were facing significant difficulties, with fraught or tenuous contact, conflicted and distrustful parental relationships, very limited shared decision making, high levels of dissatisfaction with arrangements and numerous contact problems. This translated into high levels of adult and child psychological distress.
- The PRFD sample included a higher proportion of 'hard' cases, the Cambs sample the fewest. On most measures there were no differences by area.
- Resident and non-resident parents differed on satisfaction with arrangements, some specific contact problems and reports of how children were coping. Otherwise both groups agreed that relationships were poor, that decision making was rarely shared and had similar concerns about the other parent's lack of reliability and limited parenting skills.

Findings: Immediate outcomes

- Consistent with previous research, the overall agreement rate was very high, with 76% of parents reporting a full or partial agreement.
- The agreement rate varied significantly by area, with Essex parents reporting the highest agreement rate and PRFD the lowest.
- The model, and not the characteristics of the case, determined the agreement rate.
- The agreements reached were for a restoration and/or extension of the quantity of contact. Not surprisingly, non-resident parents were significantly more satisfied with the agreements than resident parents.
- Overall, only 62% of parents were satisfied with the agreements they had reached. Parents reaching a full agreement were more satisfied than parents reaching a

partial agreement. Parents who did not reach any agreement were least satisfied overall.

Findings: Perceptions of the In-Court Conciliation Process

- The average (median) length of the conciliation session was 45 minutes.
- Only half of the sample were satisfied with the conciliation process overall, with PRFD parents least satisfied.
- Resident parents reported less choice about entering the process, more anxiety beforehand, more tension in the meeting, less able to say all they wanted to and more likely to report being pressured into an agreement by their ex-partner.
- The professionals with whom parents have most contact – lawyers, Family Court Advisors and district judges at the PRFD – received fairly high ratings in terms of impartiality and helpfulness, particularly from non-resident parents.
- Parents perceive the process as almost exclusively focused on negotiating a timetable for contact. Parents reported little educational input to help them work together. Only a handful of parents said the meeting helped them understand their ex-partner's perspective.
- There is tremendous uncertainty about whether, and how, to involve children in the process. Parents are as divided about what role children should play in the process as professionals.

Findings: Outcomes Six Months Later

- The very brief intervention had quite a marked impact. At follow up only a fifth of agreements had not worked at all, most agreements were intact or had been extended, most cases were closed with low relitigation rates, many more children were having increased contact, more parents were satisfied with the quantity and quality of contact and parents and children were doing better than at baseline.
- Parents whose cases were closed at follow up scored better on all measures than parents where the court battle was ongoing or had been resurrected.
- The other important factor is parental relationship quality at baseline – conciliation appears to work best with what were the less entrenched cases.
- Despite these successes there are some significant problems. Although the relitigation rate was low only a third of cases were closed after a single conciliation session. Parental satisfaction and parent and child wellbeing did improve from baseline to follow up, but overall levels remain low. Only 59% of parents whose cases were closed were satisfied with arrangements.

- More importantly, the conciliation session and the adoption of new contact arrangements had little impact on parental relationship quality, shared decision making and contact problems. It is these issues, rather than the mere quantity of contact, that are most likely to impact on children's adjustment. The quantity of contact alone was not related to child wellbeing in this study.

Conclusions

The specific type of in-court conciliation does make a difference to both parental satisfaction with the process and the agreement rate with the low-judicial control and mixed schemes producing the best results, controlling for case characteristics.

In-court conciliation is effective in reaching agreement and ensuring contact but, *regardless of model*, has limited impact on the key co-parenting factors that will make contact work for children. This in itself should not come as a surprise. The service that parents receive is very brief and is not designed to address relationship issues.

We identified significant problems with the conciliation process, again regardless of model. In each of the three areas the courts had adopted a standard case processing approach to achieve agreement and contact. Whilst the standard model could be appropriate for 'standard cases' the approach was ill-suited to dealing with cases raising serious risk issues and could be coercive. The rapid processing of cases and focus on settlement also meant that children were excluded from the process or risked becoming responsible for decisions.

Recommendations

In-court conciliation does have much to offer as a dispute-resolution process in contact cases. However, in-court conciliation is not suitable for all cases nor is it likely to be sufficient by itself in many cases. Our findings suggest that that a low judicial control or mixed form of conciliation should be available in all courts but within the context of a differentiated case management system offering an appropriate range of services. This would involve triage including rigorous risk assessment, followed by conciliation (or referral to mediation), together with a co-parenting programme, child programme and post-order support where necessary.

1. Introduction

Over the last few years there have been a number of proposals to reform the way in which the family justice system manages private law contact cases. In 2002 one of the principal recommendations of the Children Act Sub-Committee, in its report *Making Contact Work*, was for a system of in-court conciliation to be made available at first appointment in all courts (paras. 10.27, 10.41). This suggestion has been taken up subsequently as part of the Private Law Programme (DCA, 2004) and in the government's response to the consultation on the Green Paper on Parental Separation (Secretary of State, 2005). The expectation is that in-court conciliation will be made available to all courts as resources permit. This report, based on an empirical study of three different models of in-court conciliation, is intended to inform the debate about what contribution court-based dispute resolution schemes can make towards making contact work.

Previous research on conciliation

Despite the recent attention from policy-makers, in-court conciliation is not a new concept or practice. Since the nineteen eighties family justice system professionals have been engaged in attempts to assist parents at court to reach agreement without a contested hearing (Davis, 1988). These schemes have continued to the present day, albeit in a piecemeal fashion (MCSI, 2003).

However, concern has long been expressed about whether brief negotiations in the highly-pressured court environment can ever be fair or produce sustainable or appropriate agreements, particularly in comparison with (out of court) mediation. Gwynn Davis, for example, concluded that although the conciliation process could work, "[at] its worst it is a thoroughly unsatisfactory hybrid: a kind of 'mediation' without party control, or 'adjudication' without the opportunity to give evidence" (1988: 107).

The few studies that have been conducted do bear out some of these concerns (for a summary see Table 1.1, below). Compared to out of court mediation, in-court schemes tend to produce higher numbers of agreements, indicative of greater pressure, as well as lower levels of satisfaction with both those agreements and with the process. It is worth pointing out, however, that the two studies comparing both mediation and conciliation outcomes head-to-head have not found a substantial difference in parent

approval ratings, despite the court samples including more difficult cases (Ogus et al 1989 14.5, 20.18; Davis et al 2001: 98).

Table 1.1: Comparison of immediate and short-term outcomes in different settings for children disputes

	MEDIATION		CONCILIATION				TRIALS
	Davis et al 2001	Walker et al 2004[1]	High judicial control (Davis 1988)	High judicial control (Ogus et al 1989)	Low judicial control (Ogus et al 1989)	Low judicial control (Mantle 2001)[2]	Davis et al 2001
Agreement rate	45%	46% (28% full)	70% access cases	60% access cases	>70% access cases	70% reported	-
Satisfaction with the process		46% satisfied	55% angry or disappointed	28% satisfied	57% satisfied	44% satisfied	
Satisfaction with agreement	-	-	-	57%	59%	-	
Agreement completely in children's interests	67%	-	-	-	-	-	55%
Agreement sustained	-	-	50% agreement 'worked'	-	-	52% at 6 months	-
Later satisfaction with agreement	-	-	-	32% satisfied	51% satisfied		-
Parental collaboration	-	23% improved communication, 23% helped reduce conflict	-	Improved relationship though no more than controls	Improved relationship though no more than controls	-	-

Nonetheless there remain significant concerns about the potentially coercive or shotgun nature of court-based schemes. A recent thematic inspection by the MCSI (2003) repeated longstanding concerns about pressure and parental consent, but also added two new process issues that have become more prominent over the last decade. These two problems were the inadequacy of current risk assessment procedures and the very limited way in which children were able to be heard directly in the process.

[1] Including children only, finances only and all-issues cases.
[2] Sample restricted to the 70% of cases where a full or partial agreement had been reached.

To date most studies have focused on the immediate outcomes of conciliation, that is the agreement rate and parental satisfaction with the process. This does not in itself identify whether agreements result in contact occurring. There is some indication from previous studies that a substantial number of agreements breakdown, with only about half enduring for more than six months (Table 1.1). It is not clear though how conciliation influences the pattern or stability of contact.

We have even fewer answers to the critical question identified by Davis et al (2001: 272) "to what extent are things now better?' or, in this context, to what extent conciliation makes contact 'work' for children and their parents. This is particularly important in the light of developmental research highlighting what factors do promote child wellbeing after separation. It is now well established that the key predictors of positive child adjustment post-separation are family income, the level of conflict between parents, and the quality of the child's relationship with, and parenting capacity of, the resident parent and then the non-resident parent (for reviews see Amato & Gilbreth, 1999; Whiteside & Becker, 2000; Rodgers & Pryor, 1998; Hunt, 2003). It is important to note that there is no clear relationship between the quantity of contact and child wellbeing (Amato & Gilbreth, 1999). Put simply, it is the quality of the relationships with, and surrounding, the child that is important, not the mere presence or amount of contact. At present we know little about the impact of conciliation on these key factors – parental conflict and collaboration, relationship quality and parenting capacity – that make a difference to the quality of contact for children and have a measurable impact on their wellbeing. The indications are, however, that neither mediation nor conciliation make much significant difference (Table 1.1 above).

The aims of the study

The broad aim of the study was to identify what contribution in-court conciliation could play in facilitating contact. The study had three objectives. The first was to identify the immediate and short-term outcomes of in-court conciliation in contested contact cases. We sought to identify whether conciliation delivered:

- satisfactory agreements (agreement rate and agreement satisfaction),
- via a fair and safe process (process satisfaction), that would result in
- high quality meaningful contact for children where appropriate and greater parental collaboration (short-term outcomes).

The second objective was to identity whether different approaches to conciliation produced different results, i.e. whether one model of conciliation was more or less

effective than another. The study therefore included an evaluation of three different models of in-court conciliation (see Chapter 3).

Finally we sought to identify whether it was indeed process (or model) factors that were associated with immediate and short-term outcomes, or whether case (family) factors and process (area) factors were more important. In other words we hoped to gain some understanding of what worked with whom and why.

Structure of the report

Chapter 2 offers a detailed description of the research design, the baseline and follow up samples and our approach to the analysis of the qualitative and quantitative data. The three different approaches to in-court conciliation, or the three 'models' that form the basis for comparison, are described in Chapter 3.

The following four chapters contain the findings from the quantitative part of the study. The sequence begins with a description of the cases involved in the research. Chapter 4 provides a picture of the overall level of difficulty experienced by parents involved in court proceedings, as well as identifying similarities and differences between the three areas and the resident and non-resident parent samples. Chapter 5 then describes the immediate outcomes of conciliation, that is agreement rates, the content of agreements and satisfaction with agreements and the overall outcome. Chapter 6 describes parents' experiences of the conciliation process, including satisfaction with the process, evaluation of professionals and views on child participation. Chapter 7 explores outcomes six months after the conciliation appointment. It covers agreement durability and subsequent legal activity, the pattern of contact and contact problems, parental collaboration and child and adult wellbeing. In Chapter 8 we seek to broaden our understanding of the problems and potential of in-court conciliation by comparing and contrasting the experiences and perspectives of family justice professionals with those of the parents who have been through the conciliation process. The final chapter consists of conclusions and recommendations.

2. Methodology

The broad aim of the study was to identify the effectiveness of three different models of in-court conciliation, and in particular, to explore what worked with whom and why. The main study consisted of a survey of 250 parents who had attended an in-court conciliation appointment in the three participating areas (Table 2.1). The first interview was conducted a few days after the conciliation appointment. Seventy per cent of the parents completed follow up interviews between six and nine months later.

Table 2.1: Research interviews conducted

	Total Interviews	Essex Interviews	PRFD Interviews	Cambs Interviews
Parent baseline (T1)	250	88	82	80
Parent follow up (T2)	175	58	55	62
Lawyers	21	9	4	8
District judges	11	5	3	3
CAFCASS	16	5	7	4

The parent study was supplemented with qualitative interviews with family justice professionals from the three areas (Table 2.1). These interviews with district judges, lawyers and CAFCASS officers were designed to provide additional insights into conciliation and to complement and contextualise parent perspectives. A small number of cases from two of the areas were included in an intensive sample (not reported here). In these cases the conciliation session was recorded, in addition to standard interviews with both parents and short interviews about the case with the CAFCASS officer and lawyers.

We did not seek access to court records. We did attempt to conduct interviews with children at the PRFD who had been directly involved in the conciliation process by being interviewed at court. However we were not able to secure the triple consents, from both parents and child, necessary to proceed. Further details of the sample and data collection methods are given below.

Rationale for the selection of the three areas

An important question for this study was whether any particular approaches to conciliation were associated with better immediate and short-term outcomes. It was

necessary, therefore, to identify a number of contrasting approaches to conciliation. The large-scale study led by the Newcastle team in the nineteen eighties had highlighted a wide variation in the way in which conciliation or dispute resolution schemes operate (Ogus et al, 1989). A more recent survey indicated that this variation had continued (MCSI, 2003).

Our resources only enabled us to explore three different approaches to conciliation. We decided to replicate some of the features of the Newcastle study which had drawn a helpful, and empirically significant, distinction between schemes with high and low judicial control (Ogus et al, 1989 and see Chapter One above). We also decided to focus on schemes that had an explicit agreement-seeking orientation, as opposed to an information-giving/orientation purpose (MCSI, 2003). The selection of sites was also determined by a number of pragmatic considerations, including the support of HM Courts Service, judiciary and CAFCASS locally, sufficient throughput and reasonable geographic proximity.

Three areas were selected. The Principal Registry of the Family Division (PRFD) was chosen as an example of a scheme with high judicial control. The Essex County Courts were selected as an example of a scheme with low judicial control. Three County Courts in Suffolk and Cambridgeshire (hereafter 'Cambs') were chosen as representing a mid-point between high and low-judicial control schemes. All three schemes were settlement orientated. A further advantage of including the PRFD and Essex is that they had been included in previous research studies (Ogus et al 1989 and Mantle 2001) giving a opportunity to replicate the findings of earlier studies. The three schemes are described in detail in Chapter 3.

Sample recruitment, access and ethics

We sought to recruit a total sample of all parents who had attended an in-court conciliation appointment concerning contact during our data collection period. We restricted the sample to cases where the parties were parents of children named on the application, as we were interested in exploring the impact of the spousal relationship on outcomes. In practice there were few cases involving extended family members[3]. Reluctantly we also excluded, on resource grounds, cases where one or both parents required an interpreter at court. This only affected recruitment at the

[3] The court file survey by Smart et al (2003) found that only 6% of applications were from family members other than parents.

PRFD where approximately 5% of parents within the sampling period were not approached as the HM Courts Service staff informed us that they required an interpreter.

We gave considerable thought to how to invite parents to participate in the research. Studies relying on postal contact have had fairly low response rates (21-6% for Walker *et al.* 1994 and approximately 50% for Mantle 2001), raising issues of sample bias. We chose instead to be introduced to parents at court on 'family days' which is the method used by Pearce *et al.* (1999). The sequence was as follows:

- A short leaflet explaining the research was included with the conciliation appointment letter sent to parents by CAFCASS or HM Courts Service.
- A member of the research team attended court on conciliation days[4].
- The CAFCASS officer (or a member of HM Courts Service at the PRFD) introduced the researcher to each of the parents separately, either before or immediately after, the conciliation appointment.
- The researcher briefly outlined the aims of the research to each parent separately, explained what would be involved and emphasised that participation was voluntary and would not affect the conduct of their case. If the parent consented to take part they were then invited to sign a consent form and to provide a contact telephone number or address. Parents who were invited to take part in the intensive sample also signed an additional consent form giving permission for the session to be audio recorded. A back up copy of the leaflet was given to participating parents who needed one.
- The researcher conducted a telephone interview (or face-to-face interview if preferred) within a few days if there were still informed consent. Separate interviewers were used if both parents had agreed to participate.

The advantage of this approach is that it enabled the parents to directly assess the researchers before making a decision about participation and appeared to enhance participation rates. This direct approach, however, required us to follow stringent ethical safeguards to avoid parents feeling obliged to participate. We were very aware that we were approaching parents at a highly sensitive and stressful time. We took great care to emphasise the voluntary nature of the research and to establish informed consent, both at the initial contact at court, and before and during the interview.

[4] Between three and fifteen cases were listed per day, depending on area. It took about three months in each area to generate the necessary sample.

Throughout the study the research team worked to the Code of Ethics of the British Psychological Society. Approval for the research was sought and granted from the Lord Chancellor's Department (now Department for Constitutional Affairs), the President of the Family Division, HM Courts Service and CAFCASS at national and local level and the Ethics Committee of the School of Social Work and Psychosocial Sciences at the University of East Anglia.

The representativeness and composition of the parent samples

The decision to recruit parents face-to-face resulted in a high response rate across the three areas. We achieved interviews with 67% of Essex parents who had had a conciliation session on sampling days, 65% of PRFD parents and 72% of Suffolk/Cambridge parents. A member of the research team attended approximately three out of four family days during the three months sampling period in each area, choosing the days at random. The 'non-responders' included all parents who attended conciliation but who left before we could approach them, those who declined to take part in the research at approach stage, those who declined when subsequently contacted or who were subsequently not contactable.

Given the response rate, we are reasonably confident that the baseline sample is representative of parents attending conciliation across the three areas in the sampling period. The composition of the baseline sample gives further reassurance. The 250 baseline parents consisted of equal numbers of mothers and fathers (125 of each), and roughly equal numbers of (first) applicants and respondents (128 and 122 respectively). There were slightly more resident than non-resident parents in the sample, with 139 and 111 respectively. It is worth noting that we coded parents with joint residence as the resident parent. This meant that in four cases where both parents were interviewed there were two 'resident' parents per family.

Where possible both parents in each case were interviewed, amounting to a total of 78 pairs. Single interviewees were also admitted to the sample to avoid additional bias. Ninety-four baseline interviews were single interviews (that is with either the mother or father, but not both) and 156 were paired interviews (that is 78 former couples). Taken together, the sample is based on 172 separate families or cases. In well over half (62.4%) of cases we have data from both parents.

The sample was recruited primarily to evaluate the effectiveness of in-court conciliation as an intervention and therefore is based on parents who attended conciliation appointments in the sampling period. As a result we included within the sample all follow-up review sessions taking place within our sampling time frame but where the original application was some weeks or months earlier. This means that there may be some under-representation of potentially more 'difficult' cases where a welfare report had been ordered previously (and so were filtered out of the conciliation process) while cases initiated in the same period continued into the sample via a follow-up review. However only 13.2% of interviews in the study were review sessions and the relatively low ratio[5] of welfare reports ordered overall meant that few cases would have been filtered out. In practice therefore it is likely that the inclusion of review sessions (but not simultaneously launched cases where a welfare report was ordered) has had limited impact, but this factor should be borne in mind when interpreting the results.

Follow up telephone interviews were conducted 6-9 months after the first interview. We achieved follow-up interviews with 70% of T1 parents. Almost all non-responses at follow up were due to an inability to contact parents, often due to people having subsequently changed mobile phone numbers. Nevertheless 70% is a good follow-up response rate for this population. There were no significant differences between parents who did and did not take part in the follow up on almost all key indicators, including gender, residence, co-parenting, agreement rate, satisfaction with the conciliation process and outcome of the case (see Appendix 1). However, parents eligible for legal aid were significantly less likely to take part in the follow-up. This might reflect higher rates of mobility amongst parents with lower income. Otherwise the follow up sample was a very good representation of the baseline sample.

Data collection

The interviews with parents took place within a few days of the initial conciliation appointment. The interviews were conducted by telephone using an hour-long standardised interview schedule, with mostly fixed choice responses and some open-ended questions to explore feelings and perceptions in greater depth. Measures or questions used in other studies were adopted where possible to facilitate comparisons. Table 2.2, below, summarises the key question areas covered at both initial and follow-up interview stages.

[5] In this study, for example, only 20 parents (8.1%) reported that a welfare report had been ordered after the initial conciliation appointment.

Table 2.2: Summary table of data gathered at baseline and follow-up

PT1 (BASELINE)	PT2 (FOLLOW-UP)
Demographics: family composition, income, age, ethnicity	
Spousal relationship: length, time since separation, reason for separation, initiator of separation	
Contact (pre-application): pattern, form and amount	**Contact:** pattern, form and amount
Satisfaction with arrangements (pre-application)	**Satisfaction with arrangements**
Co-parenting (pre-application): relationship quality and shared decision making	**Co-parenting:** relationship quality and shared decision making
Contact problems: adapted from Wolchik et al (1996)	**Contact problems:** adapted from Wolchik et al (1996)
Adult and Child wellbeing: GHQ-12 Goldberg & Williams (1988) and parent-report, Strengths and Difficulties Questionnaire, Goodman (1997)	**Adult and Child wellbeing:** GHQ-12 Goldberg & Williams (1988) and parent-report, Strengths and Difficulties Questionnaire, Goodman (1997)
Litigation history: previous applications and orders in force	**Litigation history:** current agreement position, new legal advice/applications
Conciliation process: satisfaction, evaluation of professionals and perceptions (adapted from Pearson & Thoeness 1988)	
Child participation: extent and opinions	
Outcomes: extent of agreement, planned next step, satisfaction with outcome	**Outcome:** satisfaction with agreement now

Although the telephone interviews mainly included closed questions we found that most parents wanted to elaborate upon their answers. As a result we decided to tape record the T1 interviews where parents consented. These interviews were subsequently transcribed. We have included some extracts from the interviews to illustrate the quantitative data, however the full qualitative analysis will be reported separately.

The qualitative interviews with judges, lawyers and FCAs followed a broadly similar interview guide covering:

- Selection process for conciliation
- Origins/evolution of the model
- Goals/purpose
- Comparison with other processes and other models of conciliation
- Actual and ideal roles of each professional group
- Conciliation processes: power and pressure, risk, prior information, child participation, possible changes
- Overall strengths and weaknesses of conciliation

Analysis

The diversity of residence and contact arrangements in the sample has resulted in a relatively untidy dataset. Although most parents were in resident mother/contact father arrangements, there were also a small number of resident fathers and non-resident mothers. As a result for most analyses we divide the dataset by residential status rather than gender. There were too few resident fathers and non-resident mothers in the sample to conduct any separate analyses.

Outcomes were compared between two or more groups using analysis of variance and T-Tests for normally distributed variables, the corresponding non-parametric tests for non-normal variables and the chi-squared test of association for categorical variables. Whilst the number of paired accounts is a strength in that it provides the opportunity to undertake within-couple analyses,[6] it could distort findings where the analysis is at the individual rather than the case level, (e.g. age of parent), by underestimating error. We therefore performed a sensitivity analysis which allowed for the dependence between observations within a couple, but this made little difference to the results and is not reported here.

Logistic regression was used to explore the possible effects of sets of case (parent) and process (model) factors on a binary dependent variable e.g. satisfied with agreement or not. Where there were a large number of candidates, variables were selected by a forwards selection procedure. Where the dependent variable has three categories, an ordinal logistic regression was used. Both methods allow the effect of a

[6] The dyad-level analysis will be reported separately.

predictor (independent) variable on the cumulative probabilities of the dependent variable to be assessed whilst controlling for other independent variables.

Statistical significance: a non-technical explanation

We use statistical tests throughout the report to identify whether our findings are statistically significant. There are different types of statistical tests depending on the type of data that has been collected, however all have the same purpose in trying to identify whether any difference in results has simply occurred by chance or random error. The result of the statistical test is given as a 'p' value (short for probability). By convention an outcome is considered as statistically significant if the p value is 0.05 or less, meaning that there is a 5% or one in twenty (or lower) probability that the result was caused by chance.

An example might make this clearer. In the table below we present resident and non-resident reports of contact problems pre-court. The second column of the table gives the percentage of all parents reporting the specific problem occurring pre-court. The 'n' simply refers to the sample size (number) for the particular group. The third and fourth columns list the separate percentages for the resident and non-resident samples. By 'eyeballing' the third and fourth columns we can see that there are differences between the two groups on each of the three items. However, only the final column giving the test result (the p value) tells us whether the difference is statistically significant.

There is indeed a statistically significant difference between the two groups on Item 1 as the p value is 0.000 which is a smaller number than our cut-off value of 0.05. The resident and non-resident percentages on Item 2 do look quite wide apart but the p value at 0.060 (or 6%) is bigger than 0.050. Therefore there is no significant difference between resident and non-resident parents on Item 2. Nor is there a significant difference on item 3 where the p value of 0.149 is also well above 0.050. When interpreting the tables, therefore, a p value between 0.000 and 0.05 is always statistically significant whilst a p value between 0.051 and 0.51 and above is not.

Table 2.3: Contact problems ever occurring in the three months prior to the court application, by resident or non-resident parent (percentages)

	Overall (n = 250)	Resident (n = 137)	Non-resident (n = 113)	*p**
Item 1: Children upset, unsettled or difficult when coming or going	64.1	73.9	51.6	0.000
Item 2: Ex spoiling the children	37.2	42.2	30.8	0.060
Item 3: Children not wanting to go for contact or return home	56.7	60.3	52.2	0.149

**p* value assuming all individuals independent (chi-squared test).

3. The three models of in-court conciliation

Introduction

In this chapter we describe the three different models of in-court conciliation included in this study. The purpose is to enable the reader to gain an overall understanding of the nature of in-court conciliation, but also to identify how the three models differ in their approach.

As discussed in the previous chapter, the three models were chosen on the basis that they offered different models of in-court conciliation, were likely to offer access to the research team and were in reasonable geographic proximity. The description of the three models is derived from our own observations and discussions at court, as well as from any written material and interviews with local practitioners in the three areas.

Four courts were included in the Essex sample - Colchester, Chelmsford, Harlow and Southend-on-Sea. The Cambridgeshire/Suffolk (Cambs) sample included Cambridge, Peterborough and Bury St Edmunds. There were a few minor procedural differences between courts in a particular area, but overall the three approaches were clearly distinct.

A summary of the key characteristics of the three models is provided in Table 3.1 below. Each model is described in greater detail in the following sections.

Table 3.1: The three models in summary

	ESSEX	PRFD	CAMBS
Eligibility for ICC	Automatic listing of all s.8[7] cases by HM Courts Service.	Automatic listing of all s.8 cases by HM Courts Service.	All s.8 cases are listed - ICC cases decided on the day.
Timetable for cases	Between 1-3 lists (of 3 cases per day) running each week. All fixed appointments for 1 hour.	Several lists (of 6-10 cases per day) running each week. All fixed appointments for 30 minutes.	Between 1-2 lists (of 3-15 per day, depending on court) running each week. Some fixed appointments given.
Physical layout of court	1 waiting room and limited number of meeting rooms.	21 courts over 7 floors. Similar layout per floor with waiting room and limited number of meeting rooms.	1 waiting room and limited number of meeting rooms.
Prior information before court	DJ and FCA read through C1 form separately and rarely discuss cases.	DJ and FCA read through court files together beforehand.	DJ and FCA read through C1 form beforehand separately and rarely discuss cases.
Overall sequence	1. Parents and lawyers go into side room with FCA for 1-hour appointment. 2. Parents and lawyers go into the chambers of next available DJ to report outcome/seek directions.	1. DJ assisted by FCA sees the parents and lawyers in a courtroom for the conciliation appointment. There may be breaks or adjournments outside the courtroom for further negotiation or child interviews.	1. Parents and lawyers go into Chambers to see DJ and FCA. 2. Parents meet with FCA in side room if conciliation is chosen. 3. The FCA/parents will feedback progress to lawyers. 4. Report back outcome to original DJ.
Negotiation meeting cast	CAFCASS, both parties and solicitors	CAFCASS, DJ, both parties and solicitors.	CAFCASS and both parties
Negotiation room	Small narrow room with large rectangular table for 5 chairs. FCA sits at head of table, with parents facing each other. Lawyers sit alongside their client furthest from FCA.	Standard (family) courtroom with DJ/FCA at front on dais. Parents and lawyers sit in rows facing the dais. Negotiation also occurs in corridor/meeting rooms between lawyers prior to 'appointment' or during adjournments.	Varies with court. A small room with a round low 'coffee' table in Cambridge. Elsewhere similar to Essex.
Role of legal representatives	Attend ICC meeting but watching brief rather than speaking role. More active report back role in chambers.	Take lead role. Active player in the courtroom (parents generally silent).	Do not attend ICC meeting with FCA. More active role in chambers prior to conciliation and reporting back outcome.
Role of District Judges	No involvement until the end of the process. Minimal input if agreement.	Lead role throughout.	Active at the beginning and the end of the process.

[7] That is applications for a Contact, Residence, Specific Issues and/or Prohibited Steps Order under s.8 of the Children Act 1989. Applications for Parental Responsibility would also be included in this context.

Role of CAFCASS officers	Active - first to see parents and lead role in negotiation phase. Will report back in chambers if parents are in person.	Restricted – may provide information on child development. Lead role in interviewing children.	Active – lead role in negotiation phase. Will report back in chambers if parents are in person.
Children	Not involved.	Children aged 9+ required to attend.	Not involved.
Risk issues	Few filters. Most parents are seen together (unless parents/lawyers request otherwise).	Few filters. Most parents are seen together (unless parents/lawyers request otherwise).	Some cases filtered. Most parents seen together (some FCAs offer to see parents separately).

Model 1 – Essex

Eligibility for in-court conciliation

In Essex, all section 8 cases are listed for conciliation automatically by HM Courts Service. Once applications are received HM Courts Service will send an appointment letter to parents and will inform CAFCASS about the cases and court dates. Cases are typically listed around six weeks after application. As all applications are automatically listed for in-court conciliation, little screening was carried out prior to the court appointment at the time the research was conducted.

In-court conciliation process

Generally, three cases are listed for each court day. Appointments are scheduled for an hour each and mainly listed in the morning, typically for 10am, 11am and 12pm. Parents are given one of these time slots and CAFCASS and HM Courts Service try to run to time.

The county courts in Essex are all large public buildings. The physical layout of the court varies in each area. Generally, however, there is usually one common waiting room (where coffee, tea and water is usually available) and a limited number of meeting rooms which are used by represented parents to discuss the case with their legal team. It was common for parents to wait in different areas of the building such as corridors/public areas, rather than together in the waiting room. Due to the limited number of private meeting rooms available, legal representatives and their clients would often discuss their case in a public area of the court. In one court, it was common for both parties to be in the same waiting room.

Beforehand, both CAFCASS and the district judge will have access to the case file or a copy of the C1 form. They do not discuss cases together before court.

At their allotted time, parents will be directed into a side room for their appointment with the family court adviser. Lawyers also attend this meeting if one or both of the parents are represented. Parents do not meet with the district judge until after this meeting.

In most of the courts the conciliation room is typically a small narrow room with a square/oblong table (for around 6 people). The CAFCASS officer will sit at the head of the table with both parties sitting opposite one another. Legal representatives will sit next to their client, furthest from CAFCASS. As a result of this layout, the parents are facing each other.

Almost all parents are seen together; there seems to be no routine system for asking parties if they mind sitting together in ICC. Rather it relies on parents and their legal representatives to ask either the court clerk, usher or CAFCASS officer to be seen separately. If issues are raised then CAFCASS will see both parties separately – usually by 'shuttling' between two meeting rooms (if available).

In the meeting, the CAFCASS officer first outlines the conciliation process and ground rules for the meeting. The applicant is asked to speak first and state the reason for their application. Then the respondent is asked to reply. The aim of the meeting is to try to encourage both parties to speak to one another rather than to or through the family court adviser. Lawyers adopt a watching brief rather than an advocacy role. The meeting is largely focussed on the present and the future. If either party mentions past events or issues, the CAFCASS officer will generally redirect the discussion. The meeting will run up to an hour but will often end earlier if there is any agreement. Breaks/adjournments are allowed in all courts, either requested by a parent, or legal advisor, or suggested by the CAFCASS officer.

At the end of the meeting parents will then wait until *any* district judge becomes available. In most of the Essex courts, there are two district judges available each day, both working on mixed lists. Generally the waiting period is around 5-15 minutes. Parents will then go into Chambers with their legal representatives to report the

outcome of the conciliation meeting. During this phase it is mainly the legal representatives who do most of the talking along with the CAFCASS officer. The family court advisor will sit at the side or at the back of the room, although they don't always attend if there has been a straightforward agreement. If parties are in person, the Family Court Advisors may take a larger role. The meeting with the district judge can be very short, typically 5-10 minutes if there is an agreement.

The role of professionals

The role of legal representatives in this model is most active in the Chambers phase. Once a case reaches court it appears that lawyers look to the FCA session as the primary focus for negotiation and seldom engage in bargaining in the court corridors prior to the meeting. Their role in the conciliation meeting is minimal, and mainly limited to making notes during the session, unless some point has not been raised by their client. They will also occasionally contribute during the meeting on a specific contact timetable or remind their client of any other issues. Lawyers often make notes of agreement (whereas parties are not allowed to make notes).

In contrast, legal representatives become much more active in DJ chambers where they report any outcome and may make suggestions or requests for next steps if there has been no agreement.

The role of the district judge begins only after the negotiation session. If parents have reached an agreement then the involvement of the district judge remains minimal – lawyers report back the outcome without sharing details about the issues discussed. The district judge then writes out an order, if appropriate. In such an instance, the meeting may only last 5-10 minutes. If there has been no agreement then the district judge will take more time to decide on the next steps in the case.

The role of the CAFCASS officer in this model is very active. They are the first to see the parents and take almost entire responsibility for the conduct of the negotiation meeting.

Children's involvement

In Essex, children are not invited to attend court and are not interviewed if parents do bring them to court. If no agreement has been reached at court and a report has been ordered, children may become involved in the process at that stage. On rare

occasions, in-court conciliation may be adjourned for the FCA to meet the child and to report back to the court.

Model 2 – Principal Registry of the Family Division (PRFD)

Eligibility for in-court conciliation

Like Essex, all section 8 cases are listed for conciliation automatically by HM Courts Service. Once applications are received, HM Courts Service will send an appointment letter to parents and will inform CAFCASS of cases and court dates. Most parents who apply to the PRFD are from the Greater London area, but it is not uncommon for parents from across the UK to travel there in order for their children to be interviewed. Cases are typically listed around six weeks after application.

All section 8 applications are automatically listed for in-court conciliation. Little screening is therefore carried out prior to the court appointment. Parents are not automatically offered the chance to be seen separately, but if parents, or their legal representatives, request not to be seen in the same room on occasion they are allowed to go into the courtroom separately.

In-court conciliation process

The PRFD sees, on average, about 40-50 cases per week. Section 8 lists run two or three times per week, with two courts running simultaneously, with a district judge and family court advisor dedicated to each court. Each list includes about 10 cases and all cases are given a different, though somewhat approximate, start time (e.g. 10.30, 10.45, 11.00, 11.30, 12.00, 12.30, 2.00, 2.30, 3.00).

The PRFD is a large building in central London. It encompasses 21 courts over seven floors. Each floor has a similar layout with a general waiting room, two smoking rooms and several separate meeting rooms for use by legal representatives and parents. Each floor has a drinks machine but no facilities for food. Parents who attend court in person are more likely to use the main waiting rooms. Until recently there has been no dedicated children's room for use by children while their parents are in court.

The district judge and family court advisor will typically read through all the court files together before the morning session and at lunchtime. CAFCASS also complete an index card on the outcomes of previous in-court conciliation sessions.

Legal representatives will usually arrive 30 minutes before the appointment to meet with parents. On each floor court attendants have sign in sheets and direct legal representatives and parents to vacant meeting rooms. If there are no vacant rooms available, legal representatives will either meet with parents in the corridor, in the public waiting room or in a meeting room on a different floor. The expectation is that lawyers negotiate with each other before going into court with the aim of taking an agreement in to the district judge. These negotiations take place in the corridor or shuttling between rooms.

Although each case is given an appointment slot of 30 minutes, the timetable will usually change on the day depending on which cases are 'ready' to go into court; with whoever is ready to go in being called. Legal representatives will often ask the court clerk for more time for negotiation outside of the court, allowing other cases to leapfrog into that slot. A public address system (for each floor and whole building) is used to find parties and to call cases into court.

In this model, in-court conciliation takes place in a typical court room used in the family courts. This is a large formal room with the district judge and family court advisor sitting at the front, raised on a dais and the court clerk sitting to the right of the judge. The room is set out with rows of long tables where all parties face forward towards the judge. Parents sit on the front or second row facing forward, with their solicitors sitting in between them. Counsel may occupy the front row.

Once parents go into court, it is generally legal representatives who do most of the talking. Parent generally do not speak much, if at all, unless they are representing themselves. The applicant's legal representative will generally be the first to speak. If an agreement has already been reached outside the district judge will write up the details. If there has been no agreement (or all issues have not been fully resolved), there will be a short break for legal representatives to go out and try to arrange an agreement. Breaks and adjournments are quite frequent amongst cases and parents can be at court for a morning or afternoon, sometimes all day. During these breaks, CAFCASS may interview the children (in a separate meeting room), and then feed back the information to the court. In the courtroom, the discussion is mainly led by the district judge and goes through the district judge.

On occasions where only one party arrives at court, the other parent may still go into

court and sometimes an interim order is arranged. Alternatively a legal representative may still turn up and represent the parent. If only one party is represented legal representatives will often approach lone parents before court to try and arrange an agreement to take into court.

The role of professionals

Lawyers play an important role both outside and inside the courtroom. They will usually engage in extensive negotiations with the other side before going into court. Legal representatives are also active in presenting their client's case in the courtroom.

The role of the district judge is also active from the start. If an agreement has been reached before going into court then the involvement of the district judge is more restricted, but otherwise the district judge actively directs proceedings.

The role of the CAFCASS officer in this model is largely restricted to interviewing children at court (see under). Otherwise their input in the court room is largely playing a support role to the district judge, including providing specialist information e.g. on supervised contact centres. The family court advisor usually stays in the court room with the district judge during an adjournment, unless they are interviewing children. Occasionally they may meet with parents outside the court to feedback information from the children's interview.

The Principal Registry offers two in-house services for use by parents. Firstly, there is a Citizen's Advice Bureau which employs a full time solicitor who offers legal advice (not representation). Secondly, the Personal Support Unit, a voluntary organisation based at the Royal Courts of Justice, are available to offer support to distressed parents and to accompany unrepresented parents in court. The service relies on either pre-appointments being made or on HM Courts Service staff to contact them when needed. They offer emotional support to parents rather than legal advice.

Interpreters are also often in attendance at the PRFD. Some parties use court-approved/employed professional interpreters but on occasion parents bring their family members and children to sign them in and speak for them.

Children's involvement

Unlike the other two models included in our sample, children aged nine and over are required to attend court. Younger children may also attend and be interviewed with their older siblings.

When children arrive they usually wait in a side room with their parent/s. Children are not allowed to go in the courtroom during the conciliation appointment, but instead wait outside with a friend or relative. The court has a policy that court attendants cannot be held responsible for children while their parents are in court. However not all parents are aware that their children cannot enter the courtroom and so do not always organise child care.

During a break or adjournment the family court advisor will meet with the children in a separate meeting room to ascertain their wishes and feelings. Children are usually seen individually or with siblings and, on occasion, with a parent present. Feedback from this meeting will then be given in court by the family court advisor. Practice varies on whether children are briefed by the FCA about the final outcome.

Model 3 – Cambridgeshire/Suffolk (Cambs)

Three courts were included in this model - Cambridge, Peterborough and Bury St Edmunds. All three courts ran a similar in-court conciliation process with a few minor variations.

Eligibility for in-court conciliation

All section 8 cases are listed for a first directions appointment by HM Courts Service. Once applications are received, HM Courts Service will send an appointment letter to parents (cases are typically listed around six weeks after application) and will inform CAFCASS of cases and court dates. However, unlike the other two models, on the day all cases go straight before the family court advisor and the district judge in chambers. The district judge, together with the FCA, will then decide which cases should go out for in-court conciliation. All cases are generally assumed to be suitable for in-court conciliation unless there is a particular reason for it not to occur, e.g. an agreement is made beforehand, one party does not attend court, risk etc. Quite often legal representatives will request conciliation.

In-court conciliation process

The timetable of courts varies between areas, with some courts having a short list in the morning, while others have quite large lists (12-15 cases) running all day. At court, one district judge and one or two Family Court Advisors are assigned to section 8 cases. Generally new applications are listed for the morning session while reviews are listed for the afternoon. The courts differ on whether a fixed appointment is given to parties.

The physical layout of the court varies in each area. Generally, however, there is usually one common waiting room and a limited number of meeting rooms which are used by represented parents to discuss their case with their legal team. It was common for parents to wait in different areas of the building such as corridors/public areas, rather than together in the waiting room. Due to the limited number of private meeting rooms available, legal representatives and their clients would often discuss their case in a public area of the court.

The district judge and family court advisor/s will not discuss particular cases beforehand although both will have read through the court files or application form. When parents arrive they will go straight into chambers with their legal representatives to see the district judge. The FCA will be present. If parents are represented, the lawyer will generally outline the case. If not, the parent will outline their own case. The district judge and family court advisor will then decide whether each case should go out for conciliation with CAFCASS.

Although not all listed cases will attend in-court conciliation, there is little screening of cases beforehand. In some courts, parents are routinely asked whether they would prefer to be seen by CAFCASS separately. If so, the family court advisor will see each party separately while the other party waits outside. In other courts in this model, CAFCASS will see parents separately if they are asked by either parents or their legal representatives, but it is not routinely offered.

If the case is seen as eligible for in-court conciliation the parents are taken by the family court advisor into a separate meeting room for conciliation. Legal representatives will not be present in this meeting.

The ICC room layout differs court by court. However, in most of the courts the conciliation room is typically a small square room with a low round 'coffee' table (for around five people). The CAFCASS officer and both parents will sit around the table.

The format for the meeting is similar to Essex, with the CAFCASS officer first explaining the ground rules and the process. The applicant is then invited to outline the reasons for the application and the respondent is then asked to reply. The length of the meeting is quite flexible although mostly they will last for up to an hour. Breaks/adjournments are allowed.

Following the conciliation meeting, the family court advisor or parents will meet with legal representatives to feedback progress. The waiting time to go back into court can often be the longest of the day as, unlike in Essex, the case has to be returned to the originating district judge. If it is late morning or close to lunchtime parties may be asked to come back after lunch at 2pm.

The role of professionals

The role of legal representatives in this model is episodic. There may be extensive bargaining and discussion between the two legal representatives before going into court, lawyers often introduce their client's case when going into chambers and usually report back any outcome or make suggestions for next steps when returning to chambers. However lawyers are not present during the negotiation session between the parents and CAFCASS officer.

District judges are dedicated to section 8 cases for the day rather than working on mixed lists (as in Essex). The role of the district judge is quite active at the beginning. They will meet with parents to introduce the family court advisor, explore the issues and define the agenda for conciliation. Parents will then see the district judge again following the conciliation meeting to report the outcome. If parents have reached an agreement then the involvement of the district judge is largely confined to endorsing any agreement. If not then the district judge will decide upon the next steps.

The role of the CAFCASS officer in this model is very active. Family Court Advisors will see the parents first alongside the district judge and will conduct the conciliation session. The family court advisor may go back into chambers to report back if there are no legal representatives present.

Children's involvement

Children are not invited to attend court. If no agreement has been reached at court and a report has been ordered, children may become involved in the process at that stage. Again, like in Essex, if children attend court with their parents they are not allowed to be involved in the process but are asked to sit in the waiting room.

Summary

The three areas offer three varying approaches to in-court conciliation, with the three core professional groups adopting different roles in each area. Essex provides a clear example of a low judicial control approach, with the CAFCASS officer playing a central role in getting parents to negotiate with each other. In contrast, the lead role of district judges and negotiation between lawyers characterises the approach at the PRFD. The Cambs model sits somewhere between high and low judicial control, with district judges and FCA taking turns to lead the process. The other major difference between areas is the involvement of (older) children in the process at the PRFD but not elsewhere.

4. The cases

Introduction

The aim of this chapter is to describe the nature of the cases involved in conciliation. Where appropriate we also identify differences in the composition of the three area samples and also between resident (RP) and non-resident (NRP) parents. The chapter begins by describing the socio-economic and family circumstances of the parents and their litigation history. We then look at contact patterns, contact problems and co-parenting in the run-up to the court application.

Demographics and socio-economic circumstances

The baseline sample consisted of 250 parents, equally divided between men and women. Just over half (51.2%) of parents were applicants, and just under half (45.2%) were non-resident parents.

The adults were typically in their mid-thirties, with an overall sample median age of 36 years, although Cambs parents were significantly younger (Table 4.1). Family sizes were small overall, with a sample median of one child named on the application. The median age of the oldest child was seven years and five years for the youngest child.

Table 4.1: Family ages and size, by area (mean, std deviation and median)

	Overall (n = 250)	**Essex (n = 88)**	**PRFD (n = 82)**	**Cambs (n = 80)**	***p*-value***
Age of parent (years)	36.6 (7.5) 36	36.0 (7.3) 37	39.8 (7.9) 39	34.1 (6.2) 34	.000
Number of children (named on application)	1.61 (.710) 1	1.51 (.695) 1	1.55 (632) 1	1.78 (.779) 2	.049
Age of oldest child (years)	7.56 (4.007) 7	7.23 (4.220) 7	7.99 (4.087) 8	7.49 (3.680) 7	.475
Age of youngest child (years)	6.02 (3.507) 5	5.84 (3.572) 5	6.65 (3.828) 6	5.59 (3.009) 5	.247

**p* value assuming all individuals independent (Kruskal-Wallis test/ANOVA). See chapter 2 'Statistical significance' for an explanation of statistical significance and p value.

The majority of the sample were of white ethnic origin, although there was a significantly higher proportion of non-white interviewees in the London sample (Table 4.2).

The sample overall was skewed towards the lower income range. Over half of the sample were eligible for legal aid and over a third of parents were economically inactive. There were statistically significant differences between the samples, however, with Cambs parents reporting higher levels of employment and lowest levels of legal aid eligibility.

Table 4.2: Demographic and socio-economic status by area (percentages)

	Overall (n = 250)	Essex (n = 88)	PRFD (n = 82)	Cambs (n = 80)	*p*-value*
Ethnicity (white)	85.6	97.7	62.2	96.3	.000
Legal aid (eligible)	52.0	62.5	52.4	40.0	.014
Employed (F/T or P/T)	65.6	63.6	56.1	77.5	.015

**p* value assuming all individuals independent (chi-squared test).

Family formation and reformation

Just over half of the sample had been married to their former partner, with no significant differences by area (Table 4.3). Nearly all parents had been in an established marital or cohabiting relationship, with only nine parents reporting never having lived with the other party. The median length of the parental relationship for the sample was seven years, with no differences by area.

Table 4.3: Relationship status and separation, by area (percentages)

	Overall (n = 250)	Essex (n = 88)	PRFD (n = 82)	Cambs (n = 80)	*p*-value*
Former relationship type (married)	59.2	52.3	58.5	67.5	0.132
Self-initiated separation	55.7	50.0	49.4	68.4	0.022
Domestic violence or emotional abuse cited as a reason for the separation	29.4	30.7	34.6	22.8	0.250
New partner (re-partnered)	50.8	53.4	35.0	64.1	0.001

**p* value assuming all individuals independent (chi-squared test).

A little over half of parents claimed to have been the sole or main instigator of the separation. Resident parents were significantly more likely to report having initiated the separation (p = .003). Just over a quarter (29.4%) of the sample cited domestic violence or emotional abuse as a reason for the separation. As might be expected

there was a significant difference within the sample, with 41.9% of resident parents (mostly women) referring to domestic violence or emotional abuse as a reason for the break-up, compared to just 14.3% of non-resident parents (p = .000). In contrast, non-resident parents were more likely to attribute the separation to 'drifting apart' with 41.3% of non-resident parents giving this reason, compared to just 10.5% of resident parents. It is worth noting that nearly a fifth (18.4%) of parents reported that there had been an injunction at some stage, that is 21.9% of resident parents and 14.2% of non-resident parents.

Violence as a reason for the parental relationship breakdown

"He does have a violent side. He gets, he clicks shall we say, and he can scream and shout. There's been some physical violence as well. And it finally broke down when he attacked me one day when I was holding [son] and then I decided that I didn't want that to be happening in front of him. So that was the final straw really" Resident mother, PRFD

"[It was] physical abuse towards myself from my ex-husband. It wasn't like every week, but gradually during the marriage it got worse and it was ignored. I asked him to get some help with his temper and one thing and another and he said no there wasn't a problem, etc, etc. Eventually, you know, it was the straw that broke the camel's back, I'd had enough" Resident mother, Essex

Half of the total sample had subsequently re-partnered, with 57.7% of non-resident parents and 45.2% of resident parents having a new partner at baseline. Cambs parents were both more likely to report having a new partner and to have initiated the original separation, compared to parents in the other two areas (Table 4.3).

At the first interview the average (median) time since separation was two years (Table 4.4). It is worth noting that for many parents contact problems had surfaced soon after separation. The (median) average time from separation to the start of contact problems was only eight months (Table 4.4).

Table 4.4: Post-separation and problems, by area (mean, std deviation and median)					
	Overall (n = 250)	**Essex (n = 88)**	**PRFD (n = 82)**	**Cambs (n = 80)**	***p*-value***
Time since separation (months)	33.01 (29.11) 24	29.30 (28.239) 20	35.49 (28.817) 24	34.55 (30.286) 24	.156
Separation to start of contact problems (months)	18.71 (24.571) 8	13.72 (18.838) 5.5	20.78 (24.879) 12	22.10 (28.877) 9	.159

**p* value assuming all individuals independent (Kruskal-Wallis test/ANOVA).

Litigation history

Just over a third of parents reported that there had been a previous court application in their case. This differed significantly by area, with nearly twice as many parents from the PRFD having been involved in a previous application as in Essex or Cambs (Table 4.5). However the average number of applications overall was a relatively modest 0.92 previous applications. Not surprisingly, therefore, only a quarter of parents reported that an existing contact order was in force at the time of the current application, although this was significantly higher amongst PRFD parents (Table 4.5). Only 10.4% of parents reported having an existing residence order.

Table 4.5: Litigation history, by area (percentages)					
	Overall (n = 250)	**Essex (n = 88)**	**PRFD n = 82)**	**Cambs (n = 80)**	***p****
Previous application to court	36.0	28.4	52.4	27.50	.001
Existing residence order	10.4	11.4	9.8	10.0	0.933
Existing contact order	25.6	21.6	35.4	20.0	0.046

**p* value assuming all individuals independent (chi-squared test)

Pre-court contact arrangements

About three quarters of parents reported that direct contact had been taking place in the six month period before the current application was lodged (Table 4.6). Just over half of parents reported that contact had included some overnight stays. The number of parents reporting that direct contract was taking place dropped sharply to just over half of the sample at the point when the application was made to court. However, Table 4.6 shows that there were significant differences by area. Essex parents were most likely to report that contact had broken down and Cambs parents least likely. The

picture becomes more complex when considering the average time since the last *direct* (face-to-face) contact had occurred. Parents from the PRFD reported significantly longer times since the last direct contact at a mean 14.79 months, compared to 6.38 and 8 months in Essex and Cambs respectively (p = .001).

Table 4.6: Pre-court contact arrangements, by area (percentages)

	Overall (n = 250)	Essex (n = 88)	PRFD (n = 82)	Cambs (n = 80)	*p**
Contact was occurring in the six months prior to the application	72.8	73.9	67.1	77.5	0.317
Staying contact occurring in the six months prior to the application	56.6	49.2	56.4	64.5	0.221
Contact occurring at application	58.8	48.9	58.5	70.0	0.021

**p* value assuming all individuals independent (chi-squared test)

The actual amount of contact varied substantially across the sample, ranging from no contact or very limited contact in a contact centre to 50/50 shared care arrangements. The average amount of contact in the six month period before the court application was 64 hours per month, with a median[8] of 17 hours (Table 4.7). At application, the average number of hours per month had dropped to 55 hours (median 10), reflecting the increase in the number of cases where contact had broken down completely (Table 4.7). Cambs parents reported the highest levels of contact in the run up to the application and at the point of application.

Table 4.7: Pre-court contact arrangements, by area (mean, std deviation and median)

	Overall (n = 250)	Essex (n = 88)	PRFD (n = 82)	Cambs (n = 80)	*p**
Average monthly hours of contact in the six months prior to the application	63.68 (88.751) 17	51.24 (71.493) 15	52.93 (79.077) 16	88.39 (108.975) 33	0.092
Average monthly hours of contact at application	54.88 (87.429) 10	33.75 (61.103) 0	50.89 (79.969) 16	82.21 (110.243) 18	0.004

**p* value assuming all individuals independent (Kruskal-Wallis test/ANOVA).

[8] The median is the middle value when scores are set out in ascending order. The average (or mean) is the sum of all the data divided by the number of data. The average (mean) score is generally higher than the median when the data is positively skewed, that is the scores cluster towards low values with a 'tail' of higher values. In this case a small number of high values (the shared care cases) pulled the mean upwards.

Satisfaction with arrangements pre-court

We turn now to look at satisfaction with arrangements in the run up to the court application. On this issue the main differences were between resident and non-resident parents rather than between areas.

Nearly all resident parents were satisfied with residence arrangements and with their involvement with the children and about half were satisfied with the level of contact (Table 4.8). In contrast, only half of non-resident parents were satisfied with residence and fewer than a fifth were satisfied with their involvement, with the quantity of contact or thought that the amount of contact was about right or too much (all p = .000). Interestingly, both resident and non-resident parents were fairly dissatisfied with the *quality* of contact occurring. Even fewer parents were satisfied with financial arrangements, with only a quarter expressing satisfaction.

Table 4.8: Satisfaction with pre-court contact arrangements, by resident or non-resident parent (percentages)

	Overall (n = 250)	Resident (n = 137)	Non-resident (n = 113)	*p**
Residence (satisfied)	75.2	97.8	47.8	.000
Involvement with the children (satisfied)	60.8	94.9	19.5	.000
Quality of contact (satisfied)	42.5	42.9	42.2	.513
Quantity of contact (satisfied)	34.4	46.7	19.5	.000
Quantity of contact (about right or too much)	49.6	75.9	17.7	.000
Financial matters (satisfied)	24.8	20.4	30.1	.054

**p* value assuming all individuals independent (chi-squared test).

Level of involvement, quality and quantity of contact

"I was left out of the loop with school, parents evenings, sports days and I felt that I didn't see them enough" Non-resident father, Cambs

"As a father, you know, we've got a bond, myself and my son. We talk loads together, so it does hurt, it hurts me as much as it hurts my son, not being able to see each other, you know. But I was happy, you know, as long as he's happy at home with his mother" Non-resident father, Essex

"Sporadic contact just doesn't do anyone any good. Thing is, I mean I'm quite happy for him to see them if he wants to see them, but it does cause a lot of problems when he does, obviously emotional problems with the kids. So if I had my way he wouldn't see them at all, but it's what the kids want more than anything" Resident mother, Essex

Satisfaction with financial arrangements
"Well there's huge issues around maintenance and we are still in the process of getting our financial statements together and obviously that's informed a lot of the way in which we've tried to negotiate contact. And I am bitter about, you know, how much money he gives us. He's just not giving me enough money for them, I'm expected to sort of support them" Resident mother, PRFD

"I would rather he wasn't involved at all. If he's going to be involved, I want money for her each week" Resident mother, Cambs

"Well we've had big problems with the maintenance, you know, it's sort of semi-sorted, I mean it's my own opinion why it's gone to court again, why he's wanted to see them more, is to get his maintenance down" Resident mother, Cambs

Contact problems

We presented both resident and non-resident parents with a comprehensive checklist of possible contact problems, adapted from Wolchik et al (1996). As with expressed satisfaction with the pre-court contact arrangements, parental ratings of the level of contact problems did not differ significantly by area. In this section, therefore, we focus on differences between the resident and non-resident parent samples, although it is also clear that in some respects both groups had very similar concerns. It is worth noting that the reported level of contact problems was very high across all three areas, with even the least common problem reported by nearly four out of ten parents.[9]

The checklist included three items relating to commitment to contact prior to the application. Three quarters of parents had questioned the other parent's commitment to contact, more than four in ten parents reported their ex-partner had threatened to stop (having) contact and a quarter had made that threat themselves (Table 4.9). On all three measures non-resident parents were significantly more likely to report problems.

[9] Leaving aside the two items about the parent's own behaviour in relation to punctuality and threats to stop contact.

Table 4.9: Contact problems ever occurring in the three months prior to the court application, by resident or non-resident parent (percentages)

	Overall (n = 250)	Resident (n = 137)	Non-resident (n = 113)	*p**
Ex not committed enough to contact	76.1	64.7	90.1	.000
Threat to stop (having) contact by ex	43.5	14.8	78.4	.000
Threat to stop (having) contact by self	26.4	44.8	4.5	.000
Ex not sticking to arrangements	68.1	63.8	73.6	.087
Self not sticking to arrangements	33.3	33.6	33.0	.521
Children upset, unsettled or difficult when coming or going	64.1	73.9	51.6	.000
Children not wanting to go for contact or return home	56.7	60.3	52.2	.149
Ex not enough attention, supervision or discipline	63.7	63.7	63.7	.558
Ex too harsh in discipline or might physically harm children	43.3	44.4	41.8	.403
Ex spoiling the children	37.2	42.2	30.8	.060
Ex tries to control your activities/what you do with children	57.9	41.7	77.7	.000
Children see people you don't want them to see	51.2	53.1	48.9	.325
Conflicts over money make contact more difficult	52.2	56.2	47.3	.102
Fear of violence makes it more difficult to sort out problems with ex	43.4	54.7	29.5	.000

**p* value assuming all individuals independent (chi-squared test).

Threats to stop contact

"Well I was threatened that I wouldn't have contact if I didn't meet her demands for collection, any contact, you know, she would stop me having contact" Non-resident father, PRFD

"She used to organise things for me to do with my weekends with the children, so I had no option other than to go along with it" Non-resident father, Cambs

Problems with sticking to the contact timetable were also very common, though typically more in relation to the ex-partner, rather than the self. Nearly three-quarters of

both resident and non-resident parents reported the other parent's punctuality as a problem (Table 4.9).

The sample as a whole also expressed high levels of concern about children's reaction to contact and about the parenting quality of the other parent. More than half of parents reported that children had been upset by transitions, or had not wanted to make a transition, with resident parents significantly more likely to report the former problem than non-resident parents (Table 4.9). More than 60% of parents had thought that their children were not being given enough attention or appropriate discipline whilst with the other parent, and 43% of parents had thought that the other parent might have been too harsh or might harm the child. It is indicative of the low levels of trust amongst the sample that concerns about the other parent spoiling the child was reported by only 37% of parents and was the least commonly reported problem overall (with the exception of two items relating to the self). There were no differences on any of the three parenting quality items between resident and non-resident parents.

Children's reactions to contact

"She was upset when he used to drop her off to me, you know, I'd go to pick her up and she'd got upset. But then when I got her home she was fine, but when she did want to leave, when she did go she got quite upset and quite tearful and she begged me like not to let her go back" Non-resident mother, PRFD

"The nine year old would be very quiet or subdued sometimes, but that would be when she'd been given a message to give to me from mum, or whatever" Non-resident father, Cambs

"I mean we do have a problem actually when she comes back. It's adjusting to the different house and we do have problems on occasion with bedwetting" Resident mother, Essex

Finally, around half of the sample reported problems on the four 'conflict' items: the presence of third parties, the ex-partner controlling or interfering, conflicts over money and fear of violence impacting on contact (Table 4.9). Whilst non-resident parents were significantly more likely to report that the ex-partner attempted to control or interfere with their relationship with the children, in contrast resident parents were significantly more likely to report a fear of violence. Indeed more than half of resident parents reported that fear of violence made it more difficult to sort out contact problems.

Fear of violence
"Not as far as in punching, it's mental violence, it's grabbing hold of you, it's shaking you, it's very picking up the phone and teasing you, he'll pick up the phone and say the most awful things, yeah, all the time. He's awful, when you look at it like that, he'll come round the house and just drive round the house for an hour, he'll come round at six in the morning and pop a note through the door saying I'm outside" Resident mother, Essex

"She hasn't flung anything at me recently. She hasn't tried to scratch me or throw me down any stairs, but mind you I won't let her in the house" Non-resident father, Cambs

Co-parenting, shared decision making and support

We turn now to consider the co-parental relationship. As might be anticipated from the extent of reported contact problems, the great majority of parents in the sample had experienced difficulties in establishing a positive or effective co-parental relationship with their former partner.

Few parents in the sample described the relationship with the other parent in positive terms. Just 15.6% of parents considered that the parental relationship was 'fair' or 'quite good' (Table 4.10), with more than three quarters rating the relationship as poor or non-existent. Both resident and non-resident parents were equally likely to describe the relationship negatively. There were also no differences in the evaluation of the relationship between the three areas (p = .074).

Table 4.10: Quality of parental relationship and shared decision making, by resident or non-resident parent (percentages)

	Overall (n = 250)	Resident (n = 137)	Non-resident (n = 113)	*p**
Parental relationship quality (fair or quite good)	15.6	13.9	17.7	.256
Major decisions shared (ever)	21.3	24.8	17.0	.088
Day to day decisions shared (ever)	18.5	21.9	14.3	.084
Discuss children's problems (ever)	27.7	32.1	22.3	.057

**p* value assuming all individuals independent (chi-squared test).

The level of shared decision making, encompassing major and day to day decisions and children's problems, was also very low. Only about a quarter of parents reported

ever working together on these issues, let alone routinely sharing decision making (Table 4.10). We computed a decision making scale based on the frequency with which parents shared decision making on these three items.[10] The potential score could range from 3 (never sharing any decisions) to 15 (always sharing all decisions). For both resident and non-resident parents, the median score on the shared decision making scale was 3, indicating that across the sample the lowest levels of possible shared decision making were consistently reported. There was no significant difference in the scores of resident or non-resident parents on this scale (p = .174). Nor were there any differences in scores between the three areas (p = .131).

Co-parenting and communication

"We couldn't sit there, we couldn't talk to each other, we couldn't ask each other about, 'oh how's she doing', or 'how's he doing'. There's no trust there". Resident father, PRFD

"There's no communication, you can't talk to her, you just get nothing back. Because basically I think she's in denial, because she's blaming me for everything, and I keep saying, 'Well tell me. Tell me where I've gone wrong.'" Resident father, PRFD

"Prior to just going to court it was quite, non-existent, volatile. I mean at the beginning we were very good friends, but over time it's just got worse and worse." Non-resident father, Essex

We also explored two other dimensions of co-parenting – support of each other as parents and flexibility. Only a fifth of parents reported that the other parent had ever helped them build their relationship with the children (Table 4.11). There were no differences between the resident or non-resident parent samples (p = .156), however there were significant differences between the areas with Cambs parents more likely to report support and Essex parents least likely. A similar pattern emerged in relation to flexibility over contact schedules. About a third of parents reported that their ex-partner had been flexible, but with Cambs parents significantly more likely to report this and Essex parents again least. It is worth noting that, as with reports of contact problems, parents were much more likely to rate their own behaviour positively. In this case nearly three quarters of parents described themselves as flexible, with no differences by area or by parent status (p = .236).

[10] Alpha = .912.

Table 4.11: Support and flexibility, by resident or non-resident parent (percentages)					
	Overall (n = 250)	**Essex (n = 88)**	**PRFD (n = 82)**	**Cambs (n = 80)**	***p****
Ex-partner helped build your relationship with the children (ever)	22.5	10.2	24.7	33.8	.001
You were flexible (ever)	68.0	65.0	65.3	74.0	.413
Ex-partner was flexible (ever)	34.8	27.7	31.1	46.6	.034

* *p* value assuming all individuals independent (chi-squared test).

Adult and Child Wellbeing

Finally we turn to look at how adults and children were coping. Our primary method for assessing adult well-being was the 12-item General Health Questionnaire (Goldberg & Williams 1988). The GHQ is a widely used and well-validated measure of transient psychological disturbance. As such it is highly suitable to assess distress in a population undergoing significant life events.

The level of distress reported by parents was very high. Three quarters (77.5%) of parents scored above the threshold on the GHQ (Table 4.12), a figure that almost matches a recent study of parents involved in the court welfare report process where 84% of parents scored above the threshold (Buchanan *et al.* 2001:76). The level of psychological distress was consistent across the sample, with no significant differences by residential status, nor indeed by area (*p* = .369).

Table 4.12: General Health Questionnaire, by parent status (percentages)				
	Overall (n = 209)	**Resident (n = 116)**	**Non-resident (n = 93)**	***p****
Above the threshold**	77.5	81.0	73.1	.232

* *p* value assuming all individuals independent (chi-squared test).

** Likert scoring method with cut-off at 12.

We measured child well-being using the age-appropriate parent-report Strengths and Difficulties Questionnaire (Goodman 1997). In total 156 SDQs were completed,[11] including 36 pairs where both parents reported on the same child.

[11] Ninety-four parents did not complete an SDQ. For 38 parents this was because the child was under three years, 31 non-resident parents had not seen the index child for more than six months and twenty-five parents did not have the time to complete the last section of the questionnaire or did not complete all items.

In overall terms, the SDQ Total Difficulties scores revealed levels of difficulties substantially higher than general population norms. The UK mean score[12] for the parent-completion SDQ is 8.4 (*SD* = 5.8) (Meltzer *et al.* 2000). In this study the resident parent mean was 14.53 (SD = 8.542), the non-resident parent mean was 11.21 (SD = 5.742) and the overall mean was 13.34 (SD = 7.80). In terms of 'caseness' approximately 10% of general population scores fall into the abnormal range, 10% in the borderline range and 80% in the normal range (Meltzer *et al.* 2000). In our study the number of children with borderline or abnormal scores was double the national average (Table 4.13). It is worth noting that resident parents were twice as likely to give borderline or abnormal scores as non-resident parents. In practice the resident parent reports are likely to be a more accurate measure of child well-being given the limited or no contact that many non-resident parents were having at the time of the application.[13] The high level of child distress reported by the resident parents in our sample compares with the court welfare sample of Buchanan *et al.* (2001). In that study, also relying on resident parent reports, 46% of children were given borderline or abnormal scores.

Table 4.13: Strengths and Difficulties Questionnaire, by parent status, percentages

	Overall (n = 156)	**Resident (n = 100)**	**Non-resident (n = 56)**	***p****
Borderline/abnormal score	42.9	51.0	28.6	.011

**p* value assuming all individuals independent (chi-squared test).

Summary

We have sought in this chapter to present a clear picture of the cases that are being seen in in-court conciliation. There were some differences by area. On some measures, those parents recruited at the PRFD appear to include a greater proportion of the 'hardest' and most entrenched cases, at least in relation to their prior legal system involvement and the overall length of time that had elapsed since the last direct contact had occurred. On other measures though, cases recruited at Essex seemed more problematic, as, for example, parents in Essex reported the lowest overall rates of contact occurring at application and the lowest overall number of contact hours

[12] Based on a sample of 10,298. The Total Difficulty Score ranges from 0-40 with low scores representing higher levels of well-being.
[13] It also avoids the problem of double-counting of the same child where both parents produced SDQs.

occurring on a monthly basis. The Cambs sample appeared to include the fewest entrenched cases and the highest levels of contact and more positive co-parental relationships. These differences between the areas will need to be taken into account when evaluating the effectiveness of the three different models of conciliation.

On most measures, however, what is striking are the similarities between the three areas, including important measures such as expressed parental satisfaction with pre-court contact arrangements, ratings of contact problems, parental relationship quality, co-parenting and parent and child wellbeing.

It is a similar picture when comparing the experiences and perspectives of resident and non-resident parents. Some marked differences were apparent, most notably in relation to satisfaction with arrangements, some specific contact problems and reports of how children were coping. However, again, the similarities were also striking, with both sets of parents agreeing that relationships were poor, that decision making was rarely shared and with similar concerns about the other parent's lack of reliability and limited parenting skills.

Looking at the sample as a whole it is clear that the parents, and children, were facing significant difficulties, with fraught or tenuous contact, conflicted and distrustful parental relationships, very limited shared decision making, high levels of dissatisfaction with arrangements and numerous contact problems. It is therefore no surprise that this translates into high levels of adult and child distress. The cases therefore present a significant challenge to the courts and to the potential effectiveness of in-court conciliation.

5. Immediate outcomes: agreements

Introduction

Having set the scene in previous chapters, we now turn to look at the immediate outcomes of in-court conciliation, that is:

- agreement rates
- the amount and type of contact agreed
- satisfaction with the agreement
- overall satisfaction with the outcome of the case

We consider parents' perceptions and evaluation of the conciliation process in the following chapter.

Agreement rates

Nearly three quarters of parents (72.4%) reported reaching some agreement in conciliation, with nearly half of parents reporting that they had reached a full agreement on all issues (Table 5.1). The overall agreement rate is fairly high, and considerably higher than the 45-46% agreement rate reported in two recent studies of out-of-court mediation (Davis et al 2001, Walker et al 2004). The 72% figure is consistent, however, with high rates of agreement for court-based conciliation reported by previous studies (see Chapter 1). We consider below, and in the next chapter, whether the agreement rate is in fact too high.

The agreement rate did vary significantly ($p = .000$), by area. The PRFD had a significantly lower overall agreement rate than both Essex and Cambs. Essex parents reported more full agreements than the PRFD had with both full and partial agreements combined. It is worth noting that our findings replicate those of the major study by Ogus et al (1989) in finding lower agreement rates in high judicial control schemes (including the PRFD), compared to low judicial control schemes. In turn, Essex had significantly more full agreements than Cambs ($p = .023$).

Table 5.1: Agreement rates, by area (percentages)					
	Overall (n = 250)	**Essex (n = 88)**	**PRFD (n = 82)**	**Cambs (n = 80)**	***p****
Any agreement	72.4	84.1	56.1	76.3	.000
Full agreement	45.2	63.6	28.0	42.5	
Partial agreement	27.2	20.5	28.0	33.8	
No agreement	27.6	15.9	43.9	23.8	

* *p* value assuming all individuals independent (chi-squared test). See chapter 2 'Statistical significance' for an explanation of statistical significance and p value.

Predicting agreement

One of the key issues for the evaluation was to assess the relative effectiveness of the three different approaches to conciliation. More broadly, we were also seeking to identify whether it is case (parent) or process (model) factors that predict outcomes. It should be remembered that there were some differences between the three area samples prior to the intervention, with the PRFD sample containing a higher proportion of what would seem to be more difficult cases and Cambs including a higher proportion of what might seem easier cases.

The results of an ordinal regression[14] strongly indicate that the difference in agreement rates is attributable to the model of conciliation and not the characteristics of the case. Or, put another way, when controlling for a range of factors, the likelihood of reaching agreement is significantly increased by being in the Essex courts compared to PRFD ($p = .000$) or Cambs ($p = .025$). A range of case factors – eligibility for legal aid, previous applications, relationship quality, previous injunctions and time since separation - did not predict agreement rates.

We also ran a second logistic regression,[15] adding in five process perceptions: focus on the child, emotional tone, having your say, educational/advice-giving component and understanding the other's viewpoint. None of these factors was a significant predictor and area remained the sole predictor. What this seems to suggest is that it is the overall model rather than specific features of the model that make a difference to agreement rates. We explore parent perceptions of the process in the following chapter.

[14] See appendix 2a. See Chapter 2 for a brief description of logistic regression.
[15] See appendix 2b.

The content of agreements: quantity of contact

In the great majority of cases the agreement related to the quantity of contact. We had sufficient detail to quantify the amount of contact agreed, or confirmed, from 179 out of the 181 parents who had reached agreement. Only one parent reported that the agreement was for indirect contact only. Otherwise the amount of contact ranged widely from 2 to 360 hours per month. The mean amount of contact agreed was 73 hours (median 42 hours) per month. This represented a significant increase on both the 48 hours per month at application, as well as the 58 hours per month that had been occurring in the six months leading up to the application (Table 5.2).

Table 5.2: Hours of contact per month agreed, compared to baseline (mean, std deviation and median (n =179))

Hours of contact per month	Pre-court	Agreed	*p**
Six months prior to application	58.54 (83.779) 16	72.96 (83.088) 42	.000
At application	48.44 (81.039) 8	72.96 (83.088) 42	.000

* Wilcoxon signed ranks test

The amount of contact agreed varied also by court (Table 5.3), with parents in Cambridgeshire reporting the most contact and parents from PRFD reporting the least (p=.035). However, Cambridgeshire parents also reported the highest levels of contact at both baseline points, and, in fact, there was no difference between the areas in the change since baseline.

Table 5.3: Hours of contact per month agreed, by area (mean, std deviation and median)

	Total (n=179)	Essex (n=73)	PRFD (n=46)	Cambs (n=60)	*p* = Kruskal wallis	*p* = adjusting for baseline
Agreed hours of contact per month	72.96 (83.088) 42	64.32 (65.989) 40	58.43 (75.959) 32	94.60 (101.881) 67	.035	.984 (6 months pre-application) .124 (at application)

Twenty-four parents (13.4%) reported that contact would be supervised, at least initially. In all cases this appeared to be at a supported rather than supervised contact centre, or occasionally at a nursery, or by a parent or family member. The PRFD had a significantly higher number of parents reporting agreements for supervised contact (p =.013) at 26.1% of all PRFD agreements.

All arrangements for supervision appeared to be provisional arrangements subject to review or a report or hearing. Twenty-three of the 24 parents with an agreement for supervised contact were expecting to have a review, a report or hearing within the next few weeks or months. The sole exception was the lone indirect contact case where the plan appeared to be long-term.

Agreement satisfaction

We have seen then that the majority of parents reached some agreement, typically extending contact, compared to before the application. The next question to consider is parent's satisfaction with the agreements they had reached.

In total 62.4% of parents reported that they were happy, or very happy, with the agreement to which they had apparently signed up. Given that only three quarters of parents reached an agreement that translates into less than half of all parents (45.2%) reaching an agreement with which they were happy. Furthermore only half of parents who had reached an agreement said that they considered the agreement to be completely in their children's best interests and that the agreement was completely reasonable to them as a parent (Table 5.4). Given the high levels of conflict in evidence before court it is difficult to judge whether the rough division between satisfied and unsatisfied parents is an achievement against the odds or a major failing. In broader terms, however, the results are not dissimilar to previous studies of in-court conciliation, or indeed of out-of-court mediation, or even trials, although conciliation parents are less likely to report that the agreement was in children's best interests (Table 5.4).

Table 5.4: Comparison of agreement rates and satisfaction from studies of mediation, conciliation and trials.

	MEDIATION	**CONCILIATION (AT COURT)**			**TRIALS**
	Davis et al 2001	**CURRENT STUDY**	High judicial control (Ogus et al 1989)	Low judicial control (Ogus et al 1989)	Trials Davis et al 2001
Agreement rate	45%	**72.4% (45.2% full agreements)**	60% access cases	>70% access	
Satisfaction with agreement		**62.4%**	57%	59%	
Agreement completely in children's interests	67%	**48.1%**			55%
Agreement completely reasonable to you	50%	**50.3%**			

Satisfied with the agreement

"I'm relatively happy, because it's now been in front of a judge and I think it makes me relatively happy because he [ex-partner] listened to a judge tell him that this is how it's going to be. And he's a man who obviously won't listen to me, so it's been helpful in that way I guess" Resident mother, PRFD

"To be honest I am over the moon just to be able to see my daughter again, but I'm not going to think about it, but I can't help it, I haven't seen her for a while, so I'm happy, quite happy" Non-resident father, PRFD

"Well, yeah it's reasonable. I mean I don't think that it's justice for fathers anyway, so I mean I've probably got more than I thought I would, being pessimistic, but not enough in my book, so" Non-resident father, Cambs

"How happy? Well I'm happy that it's over. I'm happy that it's done and if that's what he wants, he wants his bit of paper to wave at me, then that's fine. I mean my main concern is that [daughter] is comfortable with it, so only time will tell really" Resident mother, Essex

"I was very happy with it. She [ex-partner] wasn't. But she was guided by the CAFCASS Officer as far as saying, 'I think he should have this and he should have that', as opposed to saying to my ex-wife that she was right. So obviously I wouldn't think she's at all happy with the agreement, but I am. … I wouldn't say she agreed, I would say the CAFCASS Officer told her more than she agreed, and even the Judge when we went in, you know, she was still being a little bit vocal and the Judge, you know, agreed with it" Non-resident father, Cambs

Mixed feelings or dissatisfaction with the agreement
"Unhappy, yeah, because I feel like my human rights have been invaded, and that the two hours a week, in my eyes, it's just not good enough, you know, to spend with your daughter" Non-resident father, Essex

"I'm in fact disgusted, absolutely disgusted. I feel railroaded into something. And even my solicitor has turned round and said to me, 'why did you agree to everything'? I don't know what the hell I've agreed to. I was just, I felt petrified, I signed on the dotted line … and my main concern was to get out of there. So, I do feel very railroaded into signing stuff that I just had no comprehension" Resident mother, PRFD

"I wasn't satisfied at all. Well I thought I would go in there, the Judge and everybody would know the case history and they would not grant him contact. And they're trying to make contact more and more, which will just make [daughter] worse. They don't seem to be considering her feelings and her moods at the end of the day"
Resident mother, Cambs

Predicting satisfaction with agreement at baseline

We conducted a logistic regression to identify what model and case factors were associated with satisfaction with the agreement (Appendix 2c). Two factors emerged as significant predictors of satisfaction. The first factor was having a full agreement, as opposed to a partial agreement ($p = .005$). The second predictor was parent grouping. Non-resident parents were significantly more likely to be satisfied with the agreement than resident parents ($p = .013$). This is illustrated by the bivariate results where 72.3% of non-resident parents were satisfied with the agreement compared to just 54.1% of resident parents. The data from our 58 matched pairs provide a further insight. Twenty-three pairs (39.7% of the total) reported a win-win situation with both parents happy with the agreement. Only six pairs (10.3%) reported a lose-lose situation. There were, however, twice as many father-win/mother-lose[16] cases (20, 34.5%) than mother-win/father-lose cases (9, 15.5%).

It is worth noting that area was not a significant predictor of agreement satisfaction, despite the wide differences in agreement rates. The bivariate results give some hint of this, with agreement satisfaction varying little between 66% and 59% across the three areas. The high agreement rate in Essex, therefore, does not appear to be at the expense of a lower satisfaction rate.

[16] As there could be two resident parents per former couple, we conducted the dyad analysis on the basis of gender. In practice the two categories were strongly overlapping.

Satisfaction with the overall outcome of the case

We asked all parents about their satisfaction with the overall outcome of the case at baseline, regardless of whether they had agreed or not. Half (50.8%) of parents were satisfied with the overall outcome. Almost the same number (49.4%) said they would definitely recommend conciliation to other parents. There were clear differences in the level of satisfaction by area, with only 26.8% of PRFD parents willing to recommend the model compared to between 59-61% in the other two areas. Non-resident parents were also more likely to recommend conciliation than resident parents, 58.9% and 41.6%.

The analysis of the 76 matched pairs presents a fairly similar story as for the satisfaction with outcome, though with proportionately fewer win-win outcomes, reflecting the inclusion of parents who did not reach agreement. Twenty-four pairs (31.6% of the total) reported a win-win situation with both parents satisfied with the overall outcome. Thirteen pairs (17.1%) reported a lose-lose situation. Again there were twice as many father- win/mother-lose cases (26, 34.2%) as mother-win/father-lose cases (13, 17.1%).

Explaining satisfaction with the overall outcome of the case

We ran a further logistic regression using the same set of predictor variables as for agreement satisfaction (Appendix 2d). This time only reaching an agreement predicted satisfaction. Parents reaching a full agreement ($p = .000$) and those reaching a partial agreement ($p = .018$) were significantly more likely to be satisfied than those not reaching an agreement. Again, the bivariate statistics bear this out with 69% of full agreement parents expressing satisfaction, 44.8% of those with partial agreements and just 25.8% of parents with no agreement. Although the parents at the PRFD were least likely to express satisfaction with the outcome the logistic regression indicates that this was due to the lower number of agreements at the PRFD rather than due to the model alone. Resident status was not a predictor of satisfaction with the overall outcome when other factors were taken into account, unlike for satisfaction with agreement.

Dissatisfied with the overall outcome
"No, no I'm not, [satisfied] because I did try to explain to the woman, the woman that was there, that he had done violence towards me and he denied it. I told her what he was like. She didn't want to know. I told them I didn't want him to know my new address, because I had to move and they told him [new address]. They said he had to know, and that [subsequent alleged assault] is the result of it" Resident mother, Essex

Summary

Consistent with previous research, the three in-court conciliation models had high, although varying, agreement rates. This variation in agreement rates reflected the approach to conciliation rather than case characteristics. In other words, it was the model not the case that determined the outcome.

The agreements reached typically resulted in a restoration and/or extension of the quantity of contact. Not surprisingly, therefore, non-resident parents were significantly more satisfied with the agreements than resident parents.

The evidence on whether or not agreement rates are too high is mixed. On the one hand, the overall satisfaction with agreements was modest and the qualitative data contains examples of pressurised or 'shotgun' agreements. On the other hand, there was no difference in levels of satisfaction between low and high agreement rate areas. Similarly, a key predictor of satisfaction was reaching a full agreement, or any agreement at all. It would seem therefore that whilst parents reaching an agreement express fairly modest levels of satisfaction, not reaching an agreement attracts even more dissatisfaction. We look in more detail about parents' experience of the process and the professionals involved in the next chapter.

6. Experience and perceptions of the in-court conciliation process

Introduction

In this chapter we explore parent perceptions and experience of the in-court conciliation process in more depth. We begin with perceptions before court. We then look at the conciliation process itself, including parents' evaluation of the process and the professionals involved. Finally, we consider parents' views on the involvement of children in the in-court conciliation process.

Before court

There have been concerns raised recently about the extent to which parents can give informed consent about participation in conciliation (MCSI, 2003). In this study just under three-quarters (71.6%) of parents felt that they had clear and understandable information about in-court conciliation beforehand (Table 6.1). However this differed significantly between the three court areas, with only half of PRFD parents reporting that information was clear.

Table 6.1: Informed choice before court by area and resident status (percentages)

	Area					Parent		
% agreeing with the statement	**Overall (n=250)**	**Essex (n=88)**	**PRFD (n=82)**	**Cambs (n=80)**	***p****	**RP (n=137)**	**NRP (n=113)**	***p****
Information about ICC clear	71.6	80.8	52	81.8	.000	70.8	72.4	.457
Some or complete choice about attending	32.6	16.7	30.8	51.3	.000	19.5	48.6	.000
Lawyer encouraged use of conciliation	76.3 (n=194)	75.0 (n=76)	63.6 (n=55)	88.9 (n=63)	.005	73.6 (n=110)	79.8 (n=84)	.206
Quite or very anxious about attending	58.0	54.1	67.5	52.5	.106	71.9	40.9	.000

* *p* value assuming all individuals independent (chi-squared test). See chapter 2 'Statistical significance' for an explanation of statistical significance and p value.

Although most parents had felt informed, only a third of parents felt that they had any choice about attending conciliation (Table 6.1). There were significant differences by area, however, with the highest levels of choice reported in Cambs, reflecting the fact

that conciliation appointments are decided on the day in chambers rather than automatically listed beforehand (see Chapter 3). A significantly higher number of non-resident parents also reported having some or complete choice about attending, reflecting the fact that most non-resident parents were applicants who had initiated the process.

Where parents had consulted a lawyer, most parents reported that the lawyer had encouraged them to try conciliation (Table 6.1). The level of encouragement was highest amongst Cambs lawyers, again perhaps reflecting the opt-in nature of the process in that model.

Choice about attending
"No, none whatsoever. It was very official, very frightening and very, I don't know, imposing I suppose is about the only way you can describe it. I felt quite violated. It was very impersonal, it was very to the point and I think it came worse because I had no idea it was coming" Resident mother, PRFD

"A certain amount of choice. Certainly if you didn't go then you'd be, you know, penalised" Non-resident father, Cambs

"If I didn't, my decision, I'd have no control, my decision would be made for me" Resident mother, Cambs

"I think it made it quite clear that as it's talking about our daughter, it's not an option that you would attend and so that never crossed my mind whether it was an optional thing, it's about our daughter so it was a compulsory thing in my eyes" Non-resident father, Essex

We also asked parents how anxious they were prior to their court meeting. Over half of parents across the sample (58%) reported that they were quite or very anxious at the prospect of attending in-court conciliation (Table 6.1). Resident parents were significantly more likely to report being anxious beforehand than non-resident parents ($p = .000$).

Anxiety about attending
"I was looking forward to it, because I had nothing and if you've got nothing you can't lose anything. I went in with no contact with the children, so I couldn't lose"
Non-resident father, Essex

"I was very anxious about it, but then possibly angry as well, why's he doing this to me, why are you bringing me to court, you know, it was kind of almost like anger and yeah, I mean I was anxious, but only anxious being in the same room as him, I've got to admit" Resident mother, PRFD

"I think it's quite a nervous thing, because obviously you don't know, I guess we just didn't know, I didn't know what was going to be asked of me or what was going to be required, or how much information they required, I guess there's quite a lot of unknowns really" Non-resident father, Essex

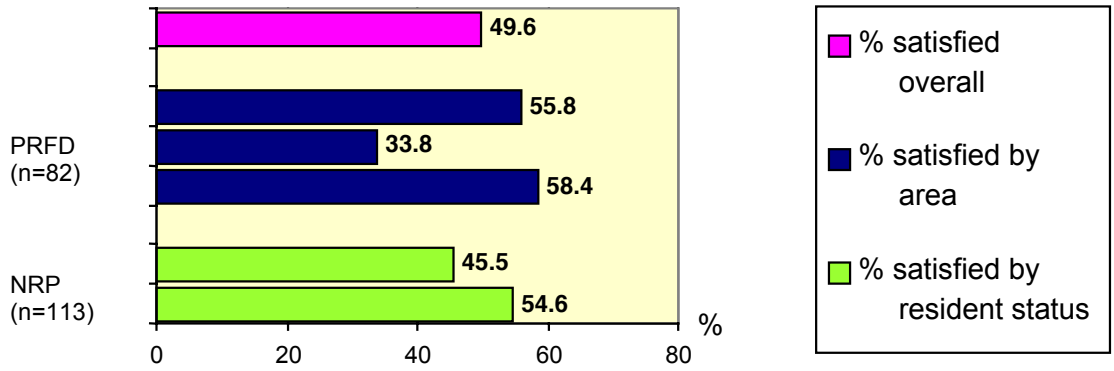
Evaluation of the conciliation process

We turn now to look at parents' experiences of the process. We start with overall perceptions and then isolate specific elements of the process.

Overall satisfaction with conciliation process

Previous studies of conciliation have reported fairly muted satisfaction with the process, with satisfaction averaging around the 50% mark (Davis, 1988; Ogus et al, 1989). The parents in our study reported similar levels of satisfaction, with half satisfied and half dissatisfied or with mixed feelings (Fig. 6.1). There was, however, a marked and significant difference in satisfaction between areas (p = .003), with only a third of parents satisfied with the process at the PRFD. This finding again replicates previous studies with lower satisfaction with process reported by parents in high judicial control areas (including PRFD), compared to low judicial control areas (Ogus et al, 1989). There was no significant difference in our study between resident and non-resident parent reports of satisfaction with the process (p =.099).

Figure 6.1: Overall satisfaction with ICC process by area and resident status, percentages



Overall satisfaction with conciliation process
"I was very satisfied with it, I've got to say that haven't I, because I got what I wanted" Non-resident father, Essex

"It's a good process, but I think it's too formal. I think being in the actual Court itself is quite intimidating. I can understand in some respects that to get people to actually turn up for them it would probably need to be at Court, but it's still quite nerve-wracking, you know, it's difficult to remember the things that you want to say" Resident mother, Essex

"I think the environment is a bit daunting and it gives the impression that you're actually in the spotlight, as opposed to being there sort of seeking help and guidance in resolving the matter. I think really that the whole atmosphere is a bit intimidating. You know, you've got someone sitting up on a bench looking down at you, you're in a sort of court room environment as opposed to, you know, I would expect if it's a sort of conciliatory session I would have expected that you would be sitting around a table in a room and, you know, with a cup of coffee or something, not sitting in a court room with somebody at the bench and, you know, it just to me doesn't create the right atmosphere for a conciliatory session" Non-resident father, PRFD

"I thought it was fine, you know, I mean I think it helped to get both feelings across, we could actually sit there, rather than having a go at me and walking out and he couldn't play his mind games, which was good" Resident mother, Essex

"I think I would say not entirely satisfied with it. I think that it, I think it sort of pulls the parties together, to try and get things sorted out, but I think that my overall feelings towards it are, sort of, not one of great satisfaction in terms of the environment that it's held in and the sort of formality of the whole affair" Non-resident father, PRFD

"Well I think it gives everyone a chance to put their views across. If they can get you to sort it out between you, then it's your decision, rather than the Judge's decision, or someone else imposing a decision on you" Non-resident father, Essex

Length of conciliation meeting

Conciliation is a brief intervention. The median length of the conciliation meeting, as reported by parents, was 45 minutes.[17] Again there was a significant difference between the median 30 minutes reported by PRFD parents and the 52.5 minutes in Essex and 50 minutes in Cambs (p = .000).

Although this appears to be a fairly short period of time, three-quarters (74.1%) of parents judged that the amount of time was about right. Only a fifth (20.6%) considered that the meeting had been too short and a handful (5.3%) thought that the

[17] The figure is restricted to contact time with District Judges and/or Family Court Advisors in court, chambers or side rooms. It does not include waiting times or adjournments or meetings with or between lawyers.

meeting was too long. Despite the significantly shorter meeting time at the PRFD there were no differences in judgments about the appropriate length of the meeting by area, or indeed by parent status.

Meeting components and climate

We presented parents with a number of statements about the content and climate of the conciliation meeting. Table 6.2 lists the statements in descending order of agreement from parents. The responses clearly identify that parents perceive or experience conciliation as a task-focused but tense meeting, with limited educational, or therapeutic, content or consequences.

Of all the process statements presented to parents, the one that received most assents concerned the conciliator's control of the content of the meeting. In fact, three quarters of parents reported that the conciliator had kept the discussion to the point, although significantly fewer at the PRFD than elsewhere. For 61% of parents this controlled agenda was reflected in a perceived focus on the children's needs.

Although the process was very business-like, for many parents it was clearly a stressful and difficult process. Sixty per cent of parents reported that the meeting had been very tense and unpleasant, with resident parents, in particular, significantly more likely to have felt this way (Table 6.2). The number of our conciliation parents reporting stress and upset is substantially higher than the 43% of mediation clients reporting that the mediation process was upsetting in the study by Davis et al (2001). The same study also found that 69% of parents who had experienced a trial had found it upsetting. Conciliation, therefore, appears to sit somewhere between mediation and hearings in terms of the level of upset and distress caused by the process, although the extent of upset experienced by conciliation parents is closer to that of parents who have had a trial than to mediation parents.

Table 6.2: Evaluation of process by area and resident status (percentages)

% agreeing with the statement	Overall (n=250)	Area (n= 88, 82, 80)	*p* *	Parent (n= 137,113)	*p* *
Conciliator made sure the discussion kept to the point	77.3	Essex 83.9 PRFD 67.1 Cambs 80.0	.030	RP 76.9 NRP 77.9	.976
Meeting focused on the children's needs and welfare	61.3	Essex 66.7 PRFD 53.9 Cambs 62.7	.241	RP 58.2 NRP 65.4	.321
Meeting was very tension filled and unpleasant	60.5	Essex 57.5 PRFD 61.8 Cambs 62.7	.764	RP 69.4 NRP 49.0	.002
I was able to say all or most of what I wanted to say	49.6	Essex 55.2 PRFD 38.2 Cambs 54.7	.054	RP 43.3 NRP 57.7	.038
Meeting did not allow enough time to deal with the past	28.6	Essex 29.9 PRFD 35.5 Cambs 20.0	.102	RP 34.3 NRP 21.2	.037
Conciliator gave us advice about how to work together as parents	26.9	Essex 25.3 PRFD 15.8 Cambs 40.0	.003	RP 26.9 NRP 26.9	1.000
Conciliator pressured me and/or my ex-partner into an agreement	23.1	Essex 21.8 PRFD 21.1 Cambs 26.7	.672	RP 26.1 NRP 19.2	.273
My ex-partner pressured me into an agreement	21.5	Essex 22.1 PRFD 18.7 Cambs 22.7	.808	RP 26.1 NRP 14.7	.049
Conciliator provided information on child development and children's needs	18.9	Essex 16.1 PRFD 15.8 Cambs 25.3	.229	RP 16.4 NRP 22.1	.344
Meeting helped me understand my ex-partner's point of view	13.4	Essex 11.5 PRFD 13.2 Cambs 16.0	.701	RP 12.7 NRP 14.4	.843

**p* value assuming all individuals independent (chi-squared test)

Meeting focused on the children's needs and welfare
"Absolutely not. No I don't think he [FCA] was even interested in that, I don't think his interests at all lay in the wellbeing of the child….only in resolving the dispute and ensure that there was contact…I don't think he was even interested in anything about the child" Resident mother, Essex

"I think they did, I think they were very good at actually putting her first in terms of what they believe is the need of the sort of child. That's why they're asking basic questions." Resident mother, PRFD

"All they was interested in was [child's] welfare, they wasn't interested in mine or, you know, the mother's. They just wanted what was best for [child]. So everything was fine. I think they done their job 100%" Non-resident father, PRFD

Discussion kept to the point
"Even when it sort of when off the rails a bit, she kept saying, at the end of the day, you know, after all we're here for [child], you know" Resident mother, Essex

"Her solicitor was trying to integrate these proceedings with things that had happened 10 years ago, and, you know, they were trying to basically discredit me, which has been the focus all along….but I think the Judge wasn't particularly interested in that, in what was being said, they just wanted to focus on what they were actually there for" Non-resident father, PRFD

Tension filled and unpleasant
"I was frightened…because I had to sit opposite [ex-partner] and he was looking at me and when the reconciliation man said can you please tell me your, I was sitting there for a minute and I looked at my solicitor, and she said 'Tell, you know'. I was frightened, because he was sitting opposite me, you know, and because he had threatened me before" Resident mother, Essex

"I think anytime that you're put in a situation when you're with (a) two Solicitors, (b) a mediator you don't know, and (c) your estranged spouse, it's not an inviting scenario" Non-resident father, Essex

"I didn't like the set up, because as soon as we arrived we went to the waiting room that you sit in and I thought it was unfair that he also sat in the same waiting room, you know, obviously some people get on and some don't, but we do not get on and that straight away made me uncomfortable" Resident mother, Essex

There have been recurrent concerns about the potentially coercive nature of the conciliation process (see Introduction). The results here give some evidence of that, although it is not universal. About a fifth of parents reported having been pressured into an agreement, either by their ex-partner or by the conciliator (Table 6.2). Resident parents were significantly more likely to report feeling under pressure by the ex-partner than non-resident parents.

On a related matter, a sizeable minority of parents, particularly resident parents, reported that they would have liked more time in the conciliation meeting to address past relationship and contact issues. Rather more parents felt constrained by what they could say in the meeting, with only half of parents reporting that they were able to say all that they had wanted to. PRFD and resident parents were significantly less likely to report having said all they had wished to say (Table 6.2).

Many fewer of our conciliation parents reported having said all they wanted to say compared to Davis et al's (2001) sample of mediation clients. In that study 71% of parents who had used mediation to sort out child disputes reported that they had said all or most of what they wanted to say. On the other hand, in the same study, almost as many parents (44%) who had had a trial reported having said all or most of what they had wanted to say compared to the 50% of our conciliation parents (Davis et al, 2001).

Able to say all or most of what I wanted to say

"I would certainly say that you couldn't say everything that you wanted, you have to be very careful about what you say and how you portray it" Non-resident father, PRFD

"Obviously you get into somewhere like that and you might have loads of things to say, but I'm the kind of person that when I'm in a position like that I sort of, you know, you can't find the words can you, you know, it's a bit like having an exam. And [ex-partner] just goes into, you know, I just haven't seen my daughter for this long and I miss her and I love her, when in fact he doesn't care at all about her, because if he did he wouldn't have done the things that he's done" Resident mother, Essex

"I think [my concerns] were heard and ignored. It doesn't suit the system" Non-resident father, PRFD

"The best thing was just being able to kind of talk to somebody and get my views across, because I felt that, you know, I felt that I really kind of needed to kind of have my voice you know" Resident mother, PRFD

"I think there were occasions where I did have to defend myself, but I think that again the court room environment doesn't make it clear as to the etiquette of the court. You're not really sure what you can, and should or shouldn't be doing, so you feel a little bit defensive about it" Non-resident father, PRFD

Too much time dealing with the past
"They didn't take the past into account at all….there had been quite a few issues prior to this arrangement where he had broken other agreements, verbal agreements, and none of that I think was taken into account, even though the Barrister claims he had all the paperwork, and I don't think any of that was taken into account" Resident mother, PRFD

"Nobody was interested, all they seemed interested in was to get [ex-partner] in contact with [child] again, not putting into consideration all the other things" Resident mother, Essex

"All he [FCA] had in front of him was my application. He didn't have any past history, or what was going on. Personally, I don't think he had enough information" Non-resident father, Essex

Pressure to agree
"Some of the things were rushed, we could have done with more discussion on, but that's because the hour was approaching to an end and I think the mediator wanted to tie it up" Resident mother, Essex

"The worst thing about it was it was just a rush, get on with it, you know, you should be happy with what you're being offered" Non-resident father, Essex

"It's all legal and it's about who's got the most clever barrister. And scoring points, to me it was like, I'm probably bringing in my previous experiences as well, but for me a lot of it is like watching MPs in the House of Commons and you just can't quite believe that they're being so utterly ridiculous….it's a very formal atmosphere, no one reassures you. When you go in on your own, like I did the first time, it's just completely mind-blowing, because you think you're turning up to talk about your problems and sort things out, when actually all it is another arena for them to squash and bully you" Resident mother, PRFD

Only a small minority of parents reported that the conciliation process addressed wider issues of contact or the co-parental relationship, although these issues are critical factors in supporting children's adjustment (see Introduction). A quarter of parents reported that the conciliator had given advice on how to work together as parents, although this element was stronger in Cambs (Table 6.2). Nor was information regarding child development and children's needs addressed, with only a fifth of parents reporting this having been provided. The lowest ranked statement of all concerned insight into their ex-partner's point of view. Only 13.4% of parents agreed that the meeting had helped them understanding the other parent's perspective, with no differences by area or by parental status.

Advice about how to work together as parents
"Wasn't relevant. We don't need to work together do we? You know, we need to be able to pass things on as necessary, but there's no real need for working together, you know. We are separated. We are individuals. We're both equally capable" Non-resident father, Cambs

"She [FCA] did make one comment, which I found very annoying, when she sort of basically said, you know, the way it's, because it did get a bit heated and argumentative and she did actually say that if we couldn't sort ourselves out as far as a mother and father in [child's] best interests then it was within her rights to have [child] put into foster care, which I thought was a bit off" Resident mother, Essex

Understanding the ex-partner's point of view
"It clarified it. I think that, yes, I mean I would say that was completely true, but for all the wrong reasons, I mean I think that it clarified, it made it very clear in my mind that the only way I was ever going to see my children was on her terms and that there was no point in going through any process, because she was either going to manipulate the process for as long as she could, or even if, you know, the process had run it's course and there was an Order, she would then, I don't believe, have complied with that Order. So yeah it made it, it clarified her position in my mind" Non-resident father, PRFD

"Well [ex-partner] had her point of view, but I never understand it. You know the thing is I've been with [ex-partner] for 5 years and she knows that I'm not a violent person and yet she's trying to use that as her reason, when I think she's still hurt over the original break up and she's trying to use that as a reason, legally, for me not to see [child], you know, so I can't understand her point of view" Non-resident father, Essex

Feelings in conciliation meeting

Parents were asked to give us three words or phrases to describe what it was like for them in the conciliation meeting. The following random selection from both resident and non-resident parents present a stark indication of the levels of tension and range of emotions that parents felt in going to court.

Resident parents	Non-resident parents
• Angry. Father kissed FCA's bottom. Acted the perfect father • Cleansing • Complete and utter waste of time • Difficult • Distressing • Embarrassing • Felt like I was mute and didn't have a voice • Frustrated • Helpful • Intimidating • I was dealing with an unreasonable person • Nightmare • No account of past problems • Not being heard • Petrified - thought that someone was going to take children away • Positive • Scared - no control over decisions • Tearful • Terrified of seeing him • Uncomfortable • Upsetting • Very emotional • Very relaxed - once in there • Wanted to get out of there • Watching my back - father's aggression and violent temper	• Anxious • Banging head against brick wall • Being decent got me nowhere - contact was in ex's gift • Biased against me • CAFCASS on my side • Claustrophobic • Court and FCA no control, mother has control • Didn't feel anything • Didn't bother me - she talked rubbish • DJ and FCA sat there like lemons • Elated - when made court order • Expensive • Felt like a bad mother • Heated, steam coming out my ears, wanted to throw her out window • In a daze - not really happening • Guilty • Mind games - court system operates at level beyond normal people • Nerve-wracking • No control • Not given chance to express myself • Ridiculous • Tense • Vindicated • Waste of time

Evaluation of professionals

We turn now to look at parents' perceptions of the level of understanding, impartiality and helpfulness of the different professionals involved in the conciliation process. It is worth noting that 21.6% of parents were unrepresented, hence the lower base samples reported below. In addition, about a third of parents in Essex and a quarter of parents

in Cambs and PRFD felt unable to evaluate the performance of the district judge due to very limited exposure. Similarly about a quarter of parents who attended the PRFD felt unable to make a comment regarding the understanding, bias or helpfulness of the family court advisor. We have included below the base numbers in each table.

We start by looking at whether parents considered that the various professionals had understood the problems in their case. Lawyers received consistently positive ratings from resident and non-resident parents across the three areas, with 86% of parents reporting that their lawyer had understood the problems in the case (Table 6.3). The level of understanding attributed to both Family Court Advisors and district judges was lower than that for lawyers, at 62% and 49% respectively. Whilst resident and non-resident parents felt equally understood by their lawyers, resident parents were significantly less likely to report that both the district judge and the FCA understood the problems in their case (Table 6.3). The ratings for FCAs were consistent across the three areas, but a significantly higher number of parents from the PRFD reported that the district judge had fully understood the issues, perhaps reflecting the larger part that district judges play in that court.

Table 6.3: Professional understanding of the problems in the case by area and resident status (percentages)

		Area				Parent		
Understood very or fairly well	**Overall (n=250)**	**Essex (n=88)**	**PRFD (n=82)**	**Cambs (n=80)**	***p****	**RP (n=137)**	**NRP (n=113)**	***p****
DJ	49.4 (n=178)	45.3 (n=53)	62.5 (n=64)	39.3 (n=61)	.027	38.9 (n=95)	61.4 (n=83)	.002
FCA	61.6 (n=219)	67.1 (n=82)	52.5 (n=61)	63.2 (n=76)	.195	56.3 (n=126)	68.8 (n=93)	.041
Lawyer	86.3 (n=182)	83.6 (n=73)	86.5 (n=52)	89.5 (n=57)	.622	86.0 (n=107)	86.7 (n=75)	.538

Understanding problems:

District judges
"Well, she just said, oh you've reached an agreement good. You know, she really didn't go into the case at all" Resident mother, PRFD

"I don't think she really knew the problems to be honest with you…We just walked in and my solicitor told her what we'd gone for, what we'd agreed, and she just asked me the dates of birth, which I got wrong, and she signed a bit of paper and that was the end of it" Non-resident father, Essex

"Well he didn't really say anything, because all he did was ask me whether I was willing to go and talk to the CAFCASS Officer, I said yes, and off I went" Resident mother, Cambs

Family Court Advisors
"She wasn't prepared to listen, she just said that the children are not old enough to decide whether they see their dad or not and I can't make that decision for them, so she didn't understand anything at all, she just wasn't prepared to listen" Resident mother, Cambs

"In all honesty, I don't think he really understood, it was kind of you know when you're having a row and it's your word against yours kind of thing, I think it was kind of like that really, I don't think he was terribly interested in my reasons" Resident mother, Essex

"I understand that it's very difficult for, obviously, a mediator, because she knows neither of us, but after you've been put through what you've been put through by [ex-partner], like I've had from him, and you're simply trying to protect your daughter from her getting hurt by him in any form…I'm scared of how he's going to treat her throughout her life, and I just wonder if she actually had had the time to learn the whole story maybe, but then you see you just don't know if she believed me or not" Resident mother, Essex

Lawyers
"She understood the problems, but she seemed, I felt that she was constrained by what was the norm" Non-resident father, Essex

"He's been through with me all the way" Resident mother, Cambs

The ratings for professional helpfulness were broadly similar to ratings of professional understanding. A very high proportion of parents rated their lawyer as fairly or very helpful (Table 6.4). However, the figures for the helpfulness of FCAs and district judges were also high, with nearly three-quarters of parents rating the FCA as helpful and 58% rating the district judge as helpful. As with the evaluation of professional understanding, district judges at the PRFD were seen as significantly more helpful than

elsewhere. Again, non-resident parents were significantly more likely to rate district judges as helpful compared to resident parents.

Table 6.4: Professional helpfulness by area and resident status (percentages)

		Area				Parent		
Fairly or very helpful	**Overall (n=250)**	**Essex (n=88)**	**PRFD (n=82)**	**Cambs (n=80)**	***p****	**RP (n=137)**	**NRP (n=113)**	***p****
DJ	58.2 (n=177)	52.0 (n=50)	73.1 (n=67)	46.7 (n=60)	.006	51.0 (n=96)	66.7 (n=81)	0.25
FCA	71.6 (n=225)	73.3 (n=86)	65.6 (n=64)	74.7 (n=75)	.453	67.2 (n=128)	77.3 (n=97)	.064
Your lawyer	87.3 (n=181)	90.1 (n=71)	78.0 (n=50)	91.7 (n=60)	.066	86.1 (n=108)	89.0 (n=73)	.366

Helpfulness:

District judges
"I found the Judge very imposing. Very unapproachable, but I don't know whether that was my fear of the situation and who he was or whatever, but I did feel actually quite gagged at talking to him" Resident mother, PRFD

"I was quite pleasantly surprised at the particular Judge that was present, because she was certainly very progressive, it's unusual for them to sort of make the comments that they did make in favour of the father, it's one of the, that's one of the most unusual experiences that I've ever heard, or come across, so that was actually quite good, I really wasn't expecting that" Non-resident father, PRFD

Family Court Advisors
"Well I don't know about helpful. I think he did his job. I don't know, you know, on the same level, I can't measure the CAFCASS Officer against, you know, people that are, you know, in our lives, so I don't know if he was helpful or not, I think he was good at his job"
Resident mother, PRFD

"Well I suppose he was trying to be helpful, he just…didn't have enough information"
Non-resident father, Essex

Lawyers – helpfulness
"Mine was absolutely helpful, I couldn't ask for any more information or anything, he gave everything to me that I needed, explained everything to me, when I would need it and how I would put my point across" Resident mother, Cambs

"His barrister made it a very aggressive arena, and I felt completely castigated before we'd even begun, and he tried to paint me as a bad mother" Resident mother, PRFD

"I think it was helpful that my solicitor was there, knowing that I didn't just have to be there with [ex-partner]" Resident mother, Essex

We also asked parents whether each professional had been impartial or had favoured either them or their ex-partner. The perceived level of impartiality of both district judges and Family Court Advisors was very high, with about three quarters of resident and non-resident parents from all areas rating both professionals as unbiased (Table 6.5). Given that lawyers are there to advise their clients it is striking that about half of the sample reported that their lawyer had been unbiased, although Cambridgeshire lawyers were seen as significantly more partisan.

Table 6.5: Professional impartiality by area and resident status (percentages)

		Area				Parent		
Was impartial	**Overall (n=250)**	**Essex (n=88)**	**PRFD (n=82)**	**Cambs (n=80)**	***p****	**RP (n=137)**	**NRP (n=113)**	***p****
DJ	74.2 (n=186)	76.3 (n=59)	75.8 (n=66)	70.5 (n=61)	.721	70.6 (n=102)	78.6 (n=66)	.142
FCA	72.7 (n=220)	72.6 (n=84)	70.5 (n=61)	74.7 (n=75)	.862	74 (n=127)	71.0 (n=93)	.363
Your lawyer	50.3 (n=165)	56.7 (n=67)	60.0 (n=45)	34.0 (n=53)	.015	52.0 (n=98)	47.8 (n=67)	.351

Impartiality:

District judges

"I felt he could have been a bit more hard line, but he has to be impartial and independent and weigh up the scales of justice" Non-resident father, PRFD

"I just think she favoured him, I think she hides her pointy ears and pointed tail actually. She just is so, she makes me angry actually. Sometimes you feel like you're troubling her, do you know what I mean, and you're just another number, you're not an individual with actual feelings about what's actually going on and whatever I feel, the whole way along, nobody seems to care, that's how I feel" Resident mother,

"I can't really say, because the judge, he only gets to know the notes that are written down by the solicitors, he doesn't actually get to listen to what's gone on in the past, you know, in the meeting" Resident mother, Essex

Family Court Advisors

"I wouldn't have said they were impartial at all. I think they're human beings and I don't think that any, I think people always say first impressions count and I think it was very clear to me that the Court Welfare Officer had tremendous sympathy for my wife and almost zero for me" Non-resident father, PRFD

"The woman took his side. It wasn't, at the end of the day, I'm concerned for my daughter's safety. She didn't care that my daughter could be in danger, all she cared about was that he was going to see his daughter." Resident mother, Cambs

"No [wasn't biased] I think that's probably why they don't give them any background at court about the past, because it would make them biased" Resident mother, Cambs

Lawyers
"Well obviously he's going to favour me isn't he?" Resident father, PRFD

"It's hard to answer that, because they're there to represent you and I mean I feel that she is genuinely is partial towards me as it were" Resident mother, PRFD

We can draw some rough comparisons between parent ratings of professionals in our conciliation study and those of parents who have experienced mediation or trials as reported by Davis et al (2001). In broad terms, parents who have attended mediation are clearly more positive about professional understanding and impartiality compared to our conciliation parents (Table 6.6). However, there is no clear gap between conciliation and trials in parental reports of professional understanding and bias (Table 6.6).

Table 6.6: Comparison of ratings of professionals from studies of mediation, conciliation and trials.

	MEDIATION*	CONCILIATION (CURRENT STUDY)	TRIALS*
Understood the case or situation	78% (mediator)	**49% (judge)** **62% (FCA)**	64% (judge)
Was impartial	83% (mediator)	**74% (judge)** **72% (FCA)**	67% (judge)

* Davis *et al*., 2001

Possible changes

We were also interested to find out which aspects on the conciliation process parents would like to be different. A range of options were presented to parents and they were asked if they felt the change would have helped them. By far the most popular change sought by parents was to have the opportunity to speak to the family court advisor separately from their ex-partner before the conciliation meeting (Table 6.7). A significantly higher number of resident parents wanted this option, although it is worth noting that more than half of non-resident parents also wanted to have a separate meeting.

None of the other possible changes commanded such a level of support. About a third of parents would have liked more time available, either in the form of a scheduled

review or more sessions (Table 6.7). Surprisingly only a third of parents would have liked the meeting to be held away from court, although resident parents were significantly more likely to want to move from court premises. Few parents opted for changes to professional roles or specific individuals. Resident parents were, however, significantly more likely to want to retain or expand the role of lawyers within the process.

Table 6.7: Possible changes that would have helped by area and resident status (percentages)

	Overall (n=250)	**Area (n= 88, 82, 80)**	***p* ***	**Parent (n= 137,113)**	***p****
Being able to talk to the FCA separately beforehand	63.6	Essex 62.0 PRFD 63.2 Cambs 65.8	.883	RP 71.3 NRP 53.9	.005
Scheduled review	42.0	Essex 42.1 PRFD 36.0 Cambs 48	.330	RP 41.3 NRP 43.0	.450
Longer sessions	37.7	Essex 37.2 PRFD 37.3 Cambs 38.7	.979	RP 40.2 NRP 34.7	.238
Having the meeting at a different place	35.1	Essex 30.0 PRFD 41.3 Cambs 34.2	.330	RP 40.3 NRP 28.4	.040
More sessions	33.5	Essex 35.0 PRFD 25.3 Cambs 40.0	.153	RP 34.4 NRP 32.4	.428
Having lawyers more involved	23.5	Essex 26.8 PRFD 16.0 Cambs 28.0	.165	RP 30.6 NRP 14.4	.003
A different FCA from the one I had	21.5	Essex 17.1 PRFD 27.4 Cambs 20.3	.296	RP 23.2 NRP 19.4	.301
A different DJ from the one I had	19.7	Essex 11.5 PRFD 18.9 Cambs 27.4	.068	RP 19.8 NRP 19.6	.553
Having lawyers less involved	16.1	Essex 7.4 PRFD 20.0 Cambs 20.0	.062	RP 10.7 NRP 22.7	.014
Would definitely recommend conciliation to others	49.4	Essex 59.8 PRFD 26.8 Cambs 61.3	.000	RP 41.6 NRP 58.9	.025

* *p* value assuming all individuals independent (chi-squared test)

Children's participation

The issue of children's participation in conciliation has been the subject of much debate. We turn now to look at the extent of child involvement in our sample before moving on to look at the level of wider support amongst parents for child participation at court. Unfortunately our data on child participation comes only from parents as we were unable to recruit any children into the sample (see Chapter 2).

Extent of involvement in ICC

In our sample, only the PRFD routinely involved children in the conciliation process, with children over the age of 9 years required to attend court (see above Chapter 3). In all 21 children from 15 cases were directly involved in conciliation at court (out of a total of 172 cases). As expected the great majority of these were from the PRFD sample, with only one child involved from the Essex and Cambs samples.

The average age of children involved at court was 11 years. The youngest child was aged 6 years (and was interviewed with 12 year old sibling) and the oldest was 16. In six cases, where there was more than one child from a family at court, the children were seen together. Children were seen individually in only two cases in our sample. According to the parents' reports, the length of the session with the family court advisor was fairly brief, with a median of 12.5 minutes (with a range from 5 – 30 minutes reported).

The twenty-three parents whose children had been involved at court were asked about their feelings about their children being seen. Opinion was highly polarised. Nine parents had liked the idea (including 4 resident parents and 5 non-resident parents) and nine parents had disliked the idea (including 7 resident parents and 2 non-resident parents). Parents were also divided about whether they thought the participation of their child(ren) at court had been helpful in finding a good outcome. Twelve out of 22 parents expressing an opinion had thought that it had been helpful (8/13 resident parents and 4/9 non-resident parents). Far fewer parents thought that their children had liked being seen, with only five of the 23 parents reporting that the eldest child had liked been seen (3/13 resident parents and 2/10 non-resident parents).

Parental views on the principle of involvement in ICC

We asked the remaining parents about their views on the *principle* of children being seen at court (Table 6.8). The responses were also polarised, with 46.6% of parents

liking the idea and 43.1% of parents disliking the idea, with no differences between resident and non-resident parents. Parents were even less sure that their (oldest) child would have liked the idea, with only 26.3% of respondents considering that they would have liked to have been involved.

Table 6.8: Views on the principle of children being seen by resident status (percentages)

	Total (n=195)	RP (n=109)	NRP (n=86)
Like the idea somewhat or very much	46.6	44	50
Neutral	10.3	12.8	7.0
Dislike the idea somewhat or very much	43.1	43.1	43

Support for children's involvement at court

"My daughter became quite upset and she started to cry and I said the lady just wants to speak to you and ask you how you feel about seeing your mum. So my son was, he was all right, he didn't cry, he said I want to see my mum, but I'm worried about going back to where she lives, because that's where they were mistreated, and I'm worried about seeing her ex-partner, who hit the children and who was a party to their being mistreated as well, so she took that on board, asked her, when my daughter calmed down, and, you know, I think it was a good thing that she cried, because she got, the CAFCASS Officer got a chance to see how they felt, how she really felt about seeing her mum" Resident father, PRFD

"I like the idea, because I think, myself personally, I think it's a good idea, because it gives the children a chance to vent their views, which I think, at the end of the day, if everything is supposed to be in favour of the children and what is in their best interests, I think it's important that they have an input, irrespective of what age" Resident father, PRFD

"[Child] wanted to have his say, he said 'I'm fed up with the thought of maybe I might have to go and see my father', and I said, 'no that won't happen I would really fight for that', and I said, at your age now you can't really be forced, so yeah that would be relevant to the children" Resident mother, PRFD

Concerns about children's involvement at court
"I think that's an awful environment to take children to. You walk in through the doors and you feel really overwhelmed…. I don't think any child should go through that. I don't think any adult should to through that. I wouldn't wish it on my worst enemy" Resident mother, PRFD

"I feel as if they should be interviewed, but I don't think that they should go to court, because I feel that they could be pressured by one parent or the other into saying things that they don't really feel. They'd be under pressure to give what they considered the right answer" Non-resident father, PRFD

"I don't actually see how a CAFCASS Officer can spend a few minutes with a child and form anything other than the view that the parent who brings that child to court wants them to hear. I'm firmly of the opinion that in such circumstances kids will be hand bagged" Non-resident father, PRFD

"I was quite irritated by the fact that then they went off to ask her 'do you want to go on holiday?' Because that's like saying to a child 'do you want crisps?' And it was the first time I've ever been angry and physically felt angry towards my child. I was really quite, I was very cold towards her, and I couldn't even speak to her. When we got out the court I was so incensed I just looked at her and it's almost wishing that you never had that child. And there's no excuse for how I felt, when I look back, I felt quite insane... but I've got to that point where if I'm looking at my child and thinking she's the one who's causing all the trouble, is there something wrong with me or is there something wrong with the system?" Resident mother, PRFD

Summary

The detailed description of parents' perceptions and experiences of the conciliation process has produced a fairly complicated story. There are some positives. The professionals with whom parents have most contact – lawyers, Family Court Advisors and district judges at the PRFD – receive fairly high ratings in terms of impartiality and helpfulness. Half of the parents were satisfied with the process overall. Although this figure does seem modest, it does match a recent study of out of court mediation by Walker et al (2004). Nor do parents have a string of suggestions to change the process.

Despite some positives there are also areas of concern. It is clear that parents experience conciliation as a task-focused process focused on negotiating an agreement about contact. There is little evidence that the process is experienced as addressing issues of co-parenting or how to work together as parents to ensure that contact is a relaxed and positive experience for children. Linked to this, there was

some evidence to support existing concerns about undue pressure or coercion, particularly for resident parents. Resident parents reported less choice about entering the process, more anxiety beforehand, more tension in the meeting, less able to say all they wanted to and more likely to report being pressured into an agreement by their ex-partner. Resident parents were also more likely to want to move conciliation away from court and to have a stronger role for lawyers. We explore in Chapter 8 how the pro-contact presumption operated by the courts may well account for the greater sense of pressure experienced by resident parents.

A second related concern is the issue of feeling understood. The qualitative data illustrates how polarised parents can be in contested contact cases. Most parents expected to have their concerns heard and acknowledged by the court, whilst some expected to have their positions endorsed by the court. Although the great majority of parents reported that the court focused on the children's needs, far fewer parents felt that their concerns were really understood. Parents were therefore more likely to report professionals as unbiased or helpful rather than to report that the professionals had understood their case. Similarly, by far the most popular proposed change was to be able to talk to the FCA separately beforehand, no doubt to explain one's concerns. Again, resident parents were significantly less likely to feel understood and more likely to want to talk to the FCA separately.

Where possible we have also tried to compare parent perceptions of elements of the conciliation process with results from studies of mediation clients and parents who have had a trial. There was clear blue water between mediation and conciliation in terms of parent ratings of having your say, upsetting process, understanding and bias. Some of the difference may well be due to greater case difficulty in the conciliation sample rather than an inherently less satisfactory process. However if case difficulty were the only explanation then we should expect the greater difficulty of trial cases to result in a very clear gap between ratings of the conciliation and trial process. In some respects our results suggest that the conciliation process is experienced by parents closer to a trial than to mediation.

Finally it is clear that there is tremendous uncertainty about whether and how to involve children's views within the process. Parents are as divided about the role children should play in the process as professionals.

7. Outcomes six months later

Introduction

In previous chapters we highlighted the extensive contact problems experienced by our sample (Chapter 4). We also identified that these problems were addressed in what was a very brief intervention (Chapter 6), but one that produced a high, potentially inflated, agreement rate (Chapter 5). We now wind the clock forward six months to see what has become of this potentially unstable mix.

We are interested in four main issues:

- *Agreement durability.* Can agreements reached so quickly and in such high numbers stick, even for six months? Why do agreements change or not change? Given the differences in agreement rates between the areas are there also differences in durability? In other words, do areas with high agreement rates also have the highest breakdown rates, reflecting a greater proportion of what could be 'forced' or 'unstable' agreements?
- *Family justice system engagement.* How much further engagement with the family justice system occurs? How many cases are still active six months later? How many cases are 'resolved' after one conciliation session? What happens to cases that did not reach agreement at baseline?
- *Contact patterns.* Are agreements about contact implemented? How often is contact occurring and how much happens?
- *Contact problems, co-parenting and wellbeing.* Have things improved from the very low baseline? Put simply, is contact working for children, rather than just happening?

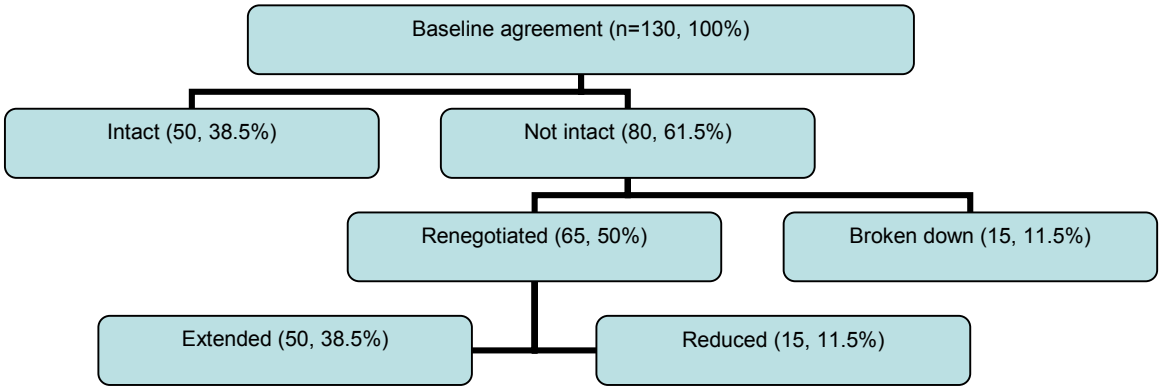
Agreement durability

The durability of baseline agreements

We saw in Chapter 4 that the baseline agreement rate was high. Six months on most of these agreements were either still intact or had been extended (Figure 7.1). Fifty parents (38.5%) reported that their baseline agreement was still 'intact' or as agreed at court. A further 65 parents (50%) had renegotiated agreements, mostly extending the amount of contact or moving from supervised to unsupervised contact. Only 15 of 130 parents reported that their agreement had broken down and had not been replaced. At follow-up therefore, 88.5% of parents with a baseline agreement still had

an agreement, however less than half of these were as originally set out at court and just over half had been subsequently renegotiated.

Figure 7.1: Status of Baseline Agreements at Follow Up (Base = 130 baseline agreements)



Although the proportion of not intact agreements was fairly high, in most cases this could be interpreted as a broadly positive developmental process rather than necessarily a failure of the existing agreement. The most common reason for a change in agreements was that the existing (baseline) agreement was an interim agreement, where the court's plan at baseline was to confirm, revise or replace an interim agreement at a later review or hearing. A typical scenario would be to agree a timetable to restart contact at the first session and then to review (and often extend) contact at a follow-up session. Nearly half of renegotiated agreements followed a review, a scheduled report or hearing (Table 7.1). A further quarter of parents reported renegotiating the agreement themselves without further professional intervention, a handful more using solicitors.

Table 7.1: Highest level of legal intervention since baseline, renegotiated agreements only (numbers and percentages)

Highest level	Number	Percentage
Parents negotiated alone	16	24.6
Solicitor negotiations	5	7.7
Planned review	24	36.9
Planned report/hearing (baseline application)	8	12.3
In-court conciliation/hearing following fresh application	12	18.5
Total	65	100

Only 12 of the 65 parents with a renegotiated agreement had re-litigated to achieve the agreement (Table 7.1). If these latter cases are combined with the 15 broken down agreements, the original agreement had manifestly failed in a fifth of cases.

We noted in chapter 5 that there was a significant difference in the baseline agreement rate between areas, attributable to the model rather than case characteristics. There was, however, no difference in the likelihood of agreements remaining intact or being intact or extended at follow up. Essex had the highest agreement rate but the Essex agreements were just as likely to be intact, or to be intact or extended, as the other two areas (Table 7.2). Conversely, the PRFD did not compensate for a lower agreement rate with higher durability at follow up.

Table 7.2: Agreement position by area, baseline agreements only (percentages)

	Overall (n = 130)	**Essex (n = 51)**	**PRFD (n = 32)**	**Cambs (n = 47)**	***p****
Baseline agreement intact	38.5	43.1	37.5	34.0	.647
Baseline agreement intact or extended	76.9	72.5	75.0	83.0	.452

* *p* value assuming all individuals independent (chi-squared test). See chapter 2 'Statistical significance' for an explanation of statistical significance and p value

We conducted a logistic regression to identify which baseline case characteristics and immediate outcomes were associated with agreements being intact or extended compared to broken down or reduced at follow up (Appendix 2e). All cases with a baseline 'fair' or 'quite good' relationship rating resulted in the agreement being intact or extended at follow up and these are omitted from the regression. The logistic regression confirmed that area was not a significant predictor, nor indeed were other factors that we had thought might influence the durability of agreements, notably previous litigation and satisfaction with the agreement at baseline.

Two factors came fairly close to being significant predictors. Not being eligible for legal aid was a marginal predictor of the agreement being intact or extended (p = .074). Having a full, as opposed to a partial, agreement was also a marginal predictor (p= .073). The bivariate figures do give a slightly higher breakdown rate for full agreements (27.5%), compared to partial agreements (16%). However, it has to be recognised that the difference is close to, but not, statistically significant and that the numbers are

small, with only 30 out of 130 agreements breaking down or being reduced. We cannot discount the possibility though that the slightly greater fragility of full agreements may be due to attempts to push through a full agreement too quickly.

The logistic regression gives some indication that the easiest cases, with unusually positive baseline parental relationships, are most likely to remain intact. Beyond that, however, the message appears to be that agreements can generate their own momentum, at least over the short-term, despite previous history and initial misgivings.

Case activity and involvement with the family justice system

We turn now to look at subsequent engagement with the family justice system. We start with looking at the current position of all the cases.

Current case position

Four out of five parents (80.6%) reported having an agreement about contact at the six month follow up. The majority of these were baseline agreements that had remained intact or had been renegotiated (Table 7.3). Although 57.8% of baseline 'non-agreers' did subsequently reach an agreement[18], the proportion still remained significantly lower ($p = .000$) than baseline 'agreers', 88.5% of whom had an agreement at follow up. The addition of later agreements in the PRFD sample meant that the overall agreement position did not differ by area at follow up ($p = .193$).

Table 7.3: Agreement position by area, all cases (percentages)

	Essex	**PRFD**	**Cambs**	**Total**
Baseline agreement intact or renegotiated	43 74.1%	27 49.1%	45 72.6%	115 65.7%
Agreement established later	5 8.6%	13 23.6%	8 12.9%	26 14.9%
Baseline agreement broken down	8 13.8%	5 9.1%	2 3.2%	15 8.6%
Agreement never reached	2 3.4%	10 18.2%	7 11.3%	19 10.9%
Total	**58 100%**	**55 100%**	**62 100%**	**175 100%**

[18] Only two parents negotiated the agreement alone. Eight reached an agreement following a scheduled review, three after a scheduled welfare report and twelve after a scheduled hearing. One parent reached an agreement at conciliation after a fresh application.

By the six month follow up, the majority of the baseline applications had been completed. Nearly three-quarters of cases were closed or inactive at follow up, with the great majority of these closed with an agreement in place (Table 7.4). A quarter of cases were still active or ongoing six months after the baseline conciliation session. These were roughly equally divided between baseline applications that were still being dealt with and cases involving a fresh application.

It is worth noting that Essex had the highest number of agreements but also a significantly higher number of closed cases than the other two areas (p = .042).

Table 7.4: Current legal process, all cases (percentages)

		Essex (n=58)	PRFD (n=55)	Cambs (n=62)	Total (n=175)
Case closed		70.7	50.9	66.1	**62.9**
Dropped, no agreement		12.1	10.9	8.1	**10.3**
Case active		17.2	38.2	25.8	**26.9**
	Under review	*1.7*	*5.5*	*12.9*	***6.9***
	Report/hearing pending	*6.9*	*14.5*	*8.1*	***9.7***
	Legal advice sought	*3.4*	*1.8*	*1.6*	***2.3***
	Fresh application lodged	***5.2***	***16.4***	***3.2***	***8.0***

We conducted a logistic regression on factors predicting case closure at follow-up (Appendix 2f). Again a positive baseline parental relationship was a significant predictor of case closure (p = .010). The second predictor was baseline agreement. Parents reporting full agreements (p = .000) and even partial agreements (p = .046) were significantly more likely to report that the case was closed compared to parents without a baseline agreement. Area was not a significant predictor in the logistic regression. The greater number of closed cases in Essex relates, therefore, to the greater number of agreements in that sample rather than to the model per se. Neither previous applications nor baseline satisfaction with the outcome of the case predicted case activity at baseline. The message again is that, to some extent, agreements generate their own momentum.

Intervening contact with the family justice system

Although a majority of cases were closed at follow up, most parents had had some further professional involvement in their case since baseline. In most cases this was at

the lower end of the tariff. The relitigation rate appeared relatively modest with only a fifth of parents reporting that a fresh application had been made, although it has to be remembered that only six months had elapsed since the baseline conciliation appointment. The relitigation rate varied across the sample, however, with Cambs having significantly fewer further applications (Table 7.5).

Table 7.5: Relitigation and solicitor consultation by area, all cases (percentages)

	Overall (n = 175)	Essex (n = 58)	PRFD (n = 55)	Cambs (n = 62)	*p**
Fresh application in the case	18.3	24.1	23.6	8.1	.035
Consulted a solicitor about the children since baseline	63.4	53.4	74.5	62.9	.066

* *p* value assuming all individuals independent (chi-squared test)

Rather more parents had subsequently consulted a solicitor about the children. Only just over a third had not consulted a solicitor (Table 7.5).

In total 56% of parents had had some professional intervention (beyond seeking legal advice) since baseline, including 2.9% reporting solicitor negotiations, 21.7% who had attended a review, 21.7% who had had a report and/or hearing on the baseline application and 9.7% who had attended a conciliation appointment or hearing on a fresh application.

By combining case activity and current case status we can identify the full extent of court involvement on each application. In all slightly under a third of parents were involved in 'open and shut cases' where their case was closed after a single conciliation session (Table 7.6). The largest group were the 'one extra effort' cases that required more than a single conciliation session before they were closed at follow up. These cases were either review cases when they were recruited into the sample and/or were initial appointments that also had later input in the form of a review, report or hearing. A further quarter of parents were involved in cases that were still ongoing or active six months after baseline. Thus, although a significant minority of cases are closed after just one session, particularly in Essex, the majority of cases do require additional professional input.

Table 7.6: Combined case input and outcome, by area, all cases (percentages)				
	Essex	**PRFD**	**Cambs**	Total
Open and shut	37.9	27.3	32.3	**32.6**
One extra effort	44.8	34.5	41.9	**40.6**
Ongoing	17.2	38.2	25.8	**26.9**
Total %	**100.0**	**100.0**	**100.0**	**100.0**
(n =)	**58**	**55**	**62**	**175**

Contact arrangements

We turn now to look at the impact conciliation has had on contact arrangements, including the amount and type of contact.

Nearly nine out of ten parents reported that direct contact was occurring at follow up. This figure is significantly higher than at the point of application, where only 64.6% of the same parents had reported that contact was occurring (Table 7.7). However the follow up rate of contact was also significantly higher than it had been in the six months before the court application, well before contact had broken down in many cases.

Table 7.7: The extent of different forms of contact at baseline and follow up, paired responses (percentages)					
	N =	**Baseline**	**Follow up**	***p****	**Direction**
Direct contact (at application)	175	64.6	86.9	.000	↑
Direct contact (6 months pre-application	175	76.0	86.9	.001	↑
Staying contact	128	57.8	75.0	.001	↑
Indirect contact	175	46.9	53.1	.177	-

* McNemar test

The type and quantity of contact also changed significantly. At baseline just over half of parents reported that contact involved at least some overnight stays. At follow up this had increased to three-quarters of parents (Table 7.7). The average amount of contact also increased significantly from both pre-conciliation time points to follow up (Table 7.8). Six months prior to the application parents reported a median 24 hours of contact per month, at the point of application this had dropped to 15 hours per month, but at follow up had more than doubled to 64 hours per month. Only the extent of indirect contact, that is letters, phone calls, email etc, remained unchanged, with only about

half of parents reporting that indirect contact took place at baseline and follow up (Table 7.8).

Table 7.8: The quantity of direct contact at follow up compared to pre-application, application and agreement quantity, paired responses (mean, SD and median)

Baseline hours of contact per month	N =	Baseline	Follow up	*p**	Direction
Pre-application (6 months prior)	174	69.23 (93.170) 24	84.45 (90.814) 69.50	.000	↑
At application	174	61.09 (91.694) 15	84.45 (90.814) 69.50	.000	↑
Agreed in conciliation session	130	77.72 (86.762) 48	84.45 (90.814) 69.50	.139	-

* Wilcoxon signed ranks test

There were no significant differences between the three areas in whether direct or contact was occurring at follow up, or the extent of staying contact. The quantity of contact continued to be significantly higher, however, amongst the Cambs sample, reflecting higher amounts of contact both pre-court and agreed at court (Table 7.9).

Table 7.9: Amount of contact at follow up, by area (mean, SD and median), n = 174

	Overall (n = 174)	Essex (n = 58)	PRFD (n = 54)	Cambs (n = 62)	*p**	*p (adjusting for baseline value)*
Hours of contact per month	84.45 (90.814) 69.50	60.64 (69.852) 35.5	81.59 (89.068) 71	109.21 (103.768) 96	.012	.112** .714***

* p value assuming all individuals independent (Kruskal-Wallis test/ANOVA).
** Compared to the amount of contact six months pre-application
*** Compared to the amount of contact at application

Satisfaction with arrangements

On most measures parents were more satisfied with arrangements at follow up than they had been at baseline. The extension of contact probably underpins the statistically higher level of satisfaction with level of involvement with children, the quality and quantity of contact and perhaps also greater satisfaction with financial arrangements at follow up (Table 7.10).

Table 7.10: Satisfaction with arrangements at baseline and follow up, in descending order of follow up satisfaction (percentages)

Satisfied	N =	Baseline	Follow up	*p**	Direction
Residence	175	76.0	72.6	.441	-
Involvement	175	61.1	72.0	.003	↑
Quality of contact	154	46.8	59.7*	.015	↑
Agreement (arrangements) satisfaction**	130	62.3	53.1	.155	-
Quantity of contact	175	38.3	51.4	.011	↑
Money	175	23.4	34.9	.010	↑
Contact quantity (about right)	175	38.3	44.6	.207	-

* McNemar test
** Comparison is between satisfaction with the agreement reached at court at baseline and current satisfaction with the agreement.

Although levels of satisfaction had increased on some measures, there were still high levels of dissatisfaction, with a bare majority of parents satisfied with the quality and quantity of contact and only a third satisfied with financial arrangements. The proportion of parents satisfied with the agreement dropped from 62% at baseline to just 53% at follow up, although the difference was not statistically significant (Table 7.10).

Non-resident parents remained significantly less satisfied with residence and their involvement with the children, adjusting for baseline values (Table 7.11). In contrast to the baseline position where resident and non-resident parents were equally dissatisfied with the quality of contact, at follow up nearly three-quarters of non-resident parents were satisfied with the quality of contact, while less than half of resident parents were satisfied ($p = .000$). There were no differences between areas on any of the satisfaction measures, other than Cambs parents were significantly more satisfied with financial arrangements ($p = .011$).

Table 7.11: Satisfaction with arrangements by resident status (percentages)					
	Overall (n= 175)	**Resident (n =96)**	**Non-resident (n = 79)**	***p****	*p***
Residence	72.6	93.8	46.8	.000	**.000**
Involvement with children	72.0	96.9	41.8	.000	**.000**
Quality of contact	57.4	44.6	72.7	.000	**.000**
Quantity of contact	51.4	58.3	43.0	.031	**.123**
Agreement (arrangements)	48.6	49.0	48.1	.516	**-**
Financial arrangements	**34.9**	**33.3**	**36.7**	**.379**	**.910**

* *p* value assuming all individuals independent (chi-squared test)
** adjusting for baseline value

We ran two logistic regressions to identify the predictors of satisfaction with the agreement/contact arrangements at follow up. In the first analysis we included only pre-court characteristics and area as predictors. In this analysis only parental relationship quality predicted later satisfaction with arrangements (Appendix 2g). Neither area nor previous litigation were significant predictors.

In the second analysis we also included an immediate outcome variable and three follow up variables. In this analysis, baseline parental relationship quality ceased to be important (Appendix 2h). Instead the likelihood of being satisfied with arrangements at follow up was increased by the case being closed, by having an agreement at follow up and by being satisfied with the outcome of the case at baseline. As with previous analyses, the clear message is that having some agreement, or getting away from the court process, is important for many parents. The bivariate analysis reinforces this message. Only a fifth (19.1%) of parents with active cases at follow up were satisfied with arrangements compared to 59.4% of parents whose cases were closed (p = .000).

Relationship quality

Although the amount of contact was significantly greater at follow up, and parents were more satisfied on at least some measures, the improvement in the quality of the parent relationship was much more limited. At follow up only a fifth of parents described the relationship with the ex-partner as ‘quite good’ or ‘fair’, no different from baseline (Table 7.12).

Table 7.12: Parental relationship quality at baseline and follow up, paired responses (percentages)					
Baseline hours of contact per month	**N =**	**Baseline**	**Follow up**	***p****	**Direction**
Relationship quality	175	13.7	20.0	.071	-

* McNemar test

We also asked, separately, about parents' perceptions of whether the relationship had improved, or not, since baseline. Only 24% of parents reported that their relationship had improved, just over half said that it had stayed the same and 23.4% reported that it had worsened since baseline.

Resident and non-resident parents were equally likely to report little positive change (p=.191) and to describe their relationship negatively at follow up, controlling for baseline reports (p=.469). Parents from the PRFD sample continued to have a more negative perception of the relationship, even controlling for baseline levels (Table 7.13). Parents whose case was closed were significantly more likely to report both a more positive and an improved relationship than parents whose case was ongoing (Table 7.13).

Table 7.13: Parental relationship quality at follow up, by area and case activity (percentages)					
	Overall (n=175)	**Area (n= 58, 55, 62)**	***p** **	**Case activity (n= 47,128)**	***p** **
Improved relationship	24.0	Essex 31.0 PRFD 12.7 Cambs 27.4	.055	Active 12.8 Inactive 28.1	.025
Fair or quite good parental relationship	20.0	Essex 22.4 PRFD 7.3 Cambs 29.0	.011 (.041)	Active 2.1 Inactive 26.6	.000 (.017)

* Chi-square test (and adjusting for baseline value)

Co-parenting and shared decision making

Similarly, having an agreement about contact was not associated with a significant improvement in most aspects of how parents worked together. At follow up fewer than a third of parents reported ever discussing children's problems with the other parent, and only a quarter ever shared major or day to day decisions. On all three issues this pattern showed no difference from baseline (Table 7.14). Nor was there any significant difference in the combined shared decision making scale, with baseline and follow up medians of three, out of a possible score of fifteen.

On three issues there was a significant change. Parents at follow up were significantly more likely to rate both themselves and their ex-partners as flexible over timetables, compared to the same parents as baseline. Similarly, parents were significantly more likely to report that their ex-partner had helped them build their relationship with the children. Although this is encouraging it represents only 15% more parents reporting their ex-partner *ever* having acted in such a fashion whilst the majority of parents reported that their ex-partner never supported their relationship with the children.

Table 7.14: Co-parenting at baseline and follow up, paired responses (percentages)

Ever occurred	N =	Baseline	Follow up	*p**	Direction
Major decisions	174	21.8	26.4	.243	-
Day to day decisions	174	19.0	23.6	.229	-
Discussed children's problems	174	26.4	31.0	.291	-
Ex-partner helped build your relationship with the children	174	23.0	37.9	.001	↑
You were flexible if your ex-partner needed a change in arrangements	152	68.4	81.6	.007	↑
Ex-partner was flexible if you needed a change in arrangements	151	36.4	49.7	.015	↑

* McNemar test

Resident and non-resident parents were remarkably similar in their reports of the extent of co-parenting, with no statistically significant differences on any the co-parenting measures. There was also very little difference in reports by area, with the sole exception that Cambs parents were significantly more likely to have ever discussed children's problems, controlling for baseline (p =.002).

Contact problems

The impact on contact problems was uneven. A third (33.1%) of parents reported that *overall* contact problems were a little or much better than at baseline, just over four out of ten (42.3%) reported that contact problems were about the same and a quarter (24.5%) that problems were a little or much worse. There were no differences in reports by area or between resident and contact parents. However, parents with a baseline agreement (p = .021), with an agreement at follow up (p= .002), and where the case was closed at follow up (p = .000), were all more likely to report an improvement in contact problems.

The picture relating to *specific* contact problems is more complicated. On most issues there was little change from baseline to follow up and the extent of contact problems remained high. Where there was change, this could be in a positive or negative direction. The influence of the court, reflected in contact patterns, is discernible in the significant decrease in threats to stop contact or to stop having contact (Table 7.15). However, some problems associated with the exercise of contact were significantly higher than at baseline, notably reports that children were reluctant or refusing contact and reports that the other parent was not sticking to arrangements. Concerns about the ex-partner's parenting quality had dropped since baseline, with concerns about lax parenting reduced significantly, however various issues about parenting quality were still a concern for at least four out of ten parents at follow up. Similarly, although there was a (non significant) decrease in reports of fear of violence impacting on contact, this remained an issue for a third of parents.

Table 7.15: Specific contact problems at baseline and follow up (percentages)

Ever occurred	N =	Baseline	Follow up	*p**	Direction
Ex-partner not committed to contact	174	74.1	78.2	.392	-
Ex not sticking to arrangements	145	66.2	75.9	.054	(↑)
Children upset, unsettled or difficult when coming or going	143	63.6	72.0	.088	-
Children not wanting to go for contact or return home after contact	144	59.0	68.8	.049	↑
Ex not enough attention, supervision or discipline	139	68.3	56.8	.023	↓
Ex tries to control your activities/what you do with the children	145	54.5	46.9	.152	-
Conflicts over money make contact more difficult	166	54.2	45.8	.076	-
Children see people you don't want them to see	135	48.9	44.4	.441	-
Ex too harsh in discipline or might physically harm children	143	44.8	42.0	.644	-
Ex spoiling the children	141	40.4	38.3	.780	-
Fear of violence makes it more difficult to sort out problems with ex	166	45.0	35.5	.071	-
Threat to stop (having) contact by ex	173	41.6	35.3	.152	-
Self not sticking to arrangements	144	31.9	31.3	1.00	-
Threat to stop (having) contact by self	173	26.6	11.0	.000	↓

* McNemar test

At follow up the distribution of problems between areas was fairly even. When controlling for baseline values, the only differences were for the ex-partner threatening to stop (having) contact where Cambs had significantly lower levels (p = .014) and fear of violence where the PRFD had significantly higher levels (p = .009).

There were also few differences in the reports of specific contact problems between resident and non-resident parents, controlling for baseline values (Table 7.16). Most commonly, both groups were equally likely to question the other's commitment, and punctuality and raise concerns about children not wanting to make transitions and the other parent's level of attention, supervision and discipline. There were three issues only on which the resident and non-resident parent samples differed, all in the expected direction. Non-resident parents were significantly more likely to report threats to stop contact, whilst resident parents were significantly more likely to report that children were upset by transitions and that fear of violence made it more difficult to sort out problems (Table 7.16).

Table 7.16: Contact problems, by resident and contact parent (percentages)

	N =	Overall	Resident	Non-resident	*p**	*p***
Ex-partner not committed to contact	96 RP 79 NRP	78.3	71.9	86.1	.018	.144
Ex not sticking to arrangements	90 RP 73 NRP	77.3	78.9	75.3	.362	.197
Children upset, unsettled or difficult when coming or going	91 RP 72 NRP	73.0	84.6	58.3	.000	.011
Children not wanting to go for contact or return home after contact	96 RP 79 NRP	69.7	68.8	70.8	.458	.458
Ex not enough attention, supervision or discipline	90 RP 72 NRP	56.8	58.9	54.2	.329	.956
Ex tries to control your activities/what you do with the children	90 RP 73 NRP	47.9	34.4	64.4	.000	.060
Conflicts over money make contact more difficult	91 RP 75 NRP	45.8	47.3	44.0	.397	.994
Children see people you don't want them to see	91 RP 71 NRP	43.2	45.1	40.8	.353	.564
Ex too harsh in discipline or might physically harm children	91 RP 72 NRP	42.9	42.9	43.1	.553	.589
Threat to stop (having) contact by ex	96 RP 79 NRP	36.0	17.7	58.2	.000	.012
Ex spoiling the children	91 RP 71 NRP	35.8	39.6	31.0	.167	.273
Fear of violence makes it more difficult to sort out problems with ex	93 RP 76 NRP	35.5	49.5	18.4	.000	.003
Self not sticking to arrangements	96 RP 79 NRP	30.9	30.3	31.5	.503	.814
Threat to stop (having) contact by self	96 RP 79 NRP	10.9	15.6	5.1	.021	.223

* Chi square test
** Value adjusting for BL value

Overall case success

To get some sense of the overall improvement in each case, we combined three variables: overall change in contact problems, overall change in parental relationship quality and overall satisfaction with arrangements at follow up. Just under a fifth (18.9%) of parents gave positive responses on all three issues[19] – the 'triple positive' group (Table 7.17). Twice as many parents (42.3%), however, gave negative responses on all three issues – the 'triple negative' group. There was also a large 'mixed' group, with positive responses on one or two issues at most. It is also worth pointing out that the triple positive group were significantly more likely to have been more positive about the parental relationship at the baseline (p = .002). In other words the greatest improvement occurred with what were already the easier relationships.

There were no differences in the distribution of overall improvement groupings by area (p =.191) or between the resident and contact parent samples (p=.973).

Combining the overall improvement groupings and subsequent litigation history gives a further indication of the strengths and limitations of in-court conciliation. Just 7.4% of all parents reported positive change/satisfaction and reached a settlement in a single conciliation session (Table 7.17). More worryingly, nearly a tenth of parents dealt with in a single session reported negative scores in all three domains. Table 7.17, illustrates again, however, the generally poorer outcomes for cases that remain active.

Table 7.17: Overall improvement and subsequent litigation history, total percentages (n = 175)

	Open and shut	One last push	Ongoing	Total %
Triple negative	9.1	14.3	18.9	**42.3**
Mixed	16.0	16.0	6.9	**38.9**
Triple positive	7.4	10.3	1.1	**18.9**
Total %	**32.6**	**40.6**	**26.9**	**100.0**

Parent and child wellbeing

We turn, finally, to examine parent and child wellbeing at follow up. We repeated the same standardised measures of wellbeing as at baseline – the General Health

[19] That is: overall contact problems a little or a lot better than before court, parental relationship a little or a lot better than before court and fairly or very happy with arrangements.

Questionnaire for adults and Strengths and Difficulties Questionnaire for children (see Chapter 4 above).

Both adults and children were doing better at follow up compared to baseline. At baseline only a quarter of parents were below the (disruption) threshold on the GHQ. At follow up the number of parents below the threshold had increased significantly to half of all parents (Table 7.18). There was also a significant positive change in the GHQ scores. The GHQ scores did not differ by area (p = .329) or between resident and non-resident parents (p = .733). There was a highly significant difference (p= .001) in GHQ scores between active cases (mean = 16.89, SD = 7.019) and inactive cases (mean = 13.40, SD = 5.566). The difference fell in the expected direction, with parents where cases were still live reporting higher levels of psychological disruption.

Table 7.18: SDQ and GHQ[20] Bandings (percentages) and Scores (mean, SD) at baseline and follow up

	N =	Baseline	Follow up	P	Direction
GHQ score	141	18.39 (7.013)	14.39 (6.177)	.000**	↓
GHQ below threshold	141	24.1	49.6	.000*	↑
SDQ score	106	13.14 (7.018)	11.48 (6.940)	.002**	↓
SDQ normal band	106	57.5%	66.0%	.078*	-

* McNemar test
** Paired samples T-Test.

The improvement in children's wellbeing was less marked. There was a significant decrease in SDQ scores, however this was not matched by a significant increase in the number of children with scores falling in the normal range (Table 7.18). Even with the decrease in scores, the overall level of distress is still high compared to UK population norms where the mean score is 8.4 and 80% of children fall within the normal range (see above Chapter 4). Resident and non-resident parent scores came very close to reaching statistical significance (p = .054). As at baseline, resident parents provided more pessimistic scores than non-resident parents.[21] There was no difference by area.

We saw above that the increase in adult wellbeing was related to whether the case was ongoing or not. In contrast, the SDQ scores did not differ between active and

[20] Likert-scoring method. Threshold of 12.
[21] Resident parents – mean = 12.26 (SD 7.469), n = 74. Non-resident parents – mean = 9.98 (SD 5.090), n = 55.

inactive cases. Nor, importantly, did follow up SDQ scores relate to the amount of contact, either pre-application, at application or at follow up (Table 7.19). Instead, follow up SDQ scores were strongly correlated to baseline SDQ scores and somewhat weakly correlated to follow up parent GHQ scores (Table 7.19).

Table 7.19: Bivariate correlations with follow up SDQ scores

	At application (hours of contact)	6 months pre-application hours of contact)	At follow up (hours of contact)	Baseline SDQ	Follow up parent GHQ
Correlation coefficient*	-.103	-.117	-.104	.678	.251
Sig. (2-tailed)	.246	.185	.243	.000	.004
N	129	129	128	106	128

* Spearman's rho. The correlation coefficient identifies the strength and direction of the relationship between two variables. A value below 0.2 is considered as very weak or neglible, 0.2-0.39 as weak, 0.4-0.59 as moderate, 0.6-0.79 as strong and over 0.8 as very strong. The correlation coefficient can be either positive (the value of the two variables go up together) or negative (as one variable goes up the other goes down). The significance level (p) tests whether the relationship has occurred by chance or random error with a cut off of .05.

Summary

Our analysis of outcomes six months after the conciliation appointment has revealed a mixed picture. In some respects the very brief intervention has had quite a marked impact – only a fifth of agreements did not work at all, most agreements were intact or had been extended, most cases were closed with low relitigation rates, many more children were having more contact, more parents were satisfied with the quantity and quality of contact and parents and children were doing better than at baseline. At follow up, the area or model factor appears to have disappeared. What is significant, instead, is having an agreement or the case being closed. It seems that having an agreement generates its own momentum, at least in the short term, and parents whose cases were closed scored better on almost all measures than parents where the court battle was ongoing or had been resurrected. The other important factor is parental relationship quality at baseline – conciliation appears to work best with what were the less entrenched cases.

Although this is an impressive list of achievements, the analysis has also highlighted real and enduring problems. The relitigation rate was low, but the majority of cases required more professional input than a single conciliation session, raising concerns about the ongoing ability of parents to adapt arrangements to suit changing needs and circumstances. Parental satisfaction and parent and child wellbeing did improve from baseline to follow up, but overall levels remain low. It is important not to over-

emphasise the positives of having an agreement – only 59.4% of parents whose cases were closed were satisfied with arrangements.

Perhaps the most pressing concern, however, is how little impact the conciliation session and the adoption of new contact arrangements had on parental relationship quality, shared decision making and contact problems. It is these issues, rather than the mere quantity of contact, that are most likely to impact on children's adjustment. The quantity of contact alone was not related to child wellbeing in this study.

8. Professional goals and the strengths and limits of conciliation

Introduction

In the previous three chapters we traced the mixed achievements of in-court conciliation. In this chapter we begin to draw these findings together. We also begin to explore why the outcomes are uneven, that is, why major changes are achieved on some issues but very little on others. To make sense of this we draw on our qualitative interviews with professionals to look in more detail at what conciliation is designed to achieve (the goals) and at the strategies and tactics professionals adopt to achieve these goals. Our argument is that the current goals and strategies of conciliation are conducive to making contact happen, but that there are inherent limitations with the approach that fall short of being able to make contact work for children.

Goals and outcomes: settlement and contact

The family courts have long had an exceptionally strong settlement orientation, designed to encourage parents to reach their own negotiated agreements, rather than to have an outcome imposed upon them via adjudication. The drive for settlement is based, at least in part, on a belief that adjudication is likely to escalate conflict between parents and is therefore harmful to children. This particular 'key message' has been extensively discussed elsewhere (e.g. Davis & Pearce 1999a, 1999b; Dewar & Parker, 2000). A more recent, but equally strong legal message is that contact with a non-resident parent is (almost always) in children's best interests (e.g. Bailey-Harris et al 1999).

Research on in-court conciliation by the Bristol team in the late nineties highlighted the importance of the twin legal goals of settlement and contact (see Davis & Pearce, 1999a-d, Pearce et al. 1999). It was clear from our observations, interviews with professionals, and the messages received from parents, that the emphasis on settlement and contact continues to dominate conciliation. Despite some differences in process and procedures in our three areas, what was also striking was that the twin goals were just as important in each area. In effect the differences in models were procedural or technical niceties compared to the degree of consensus on the underlying professional goals and values.

Nevertheless, conciliation is a fairly effective and efficient means of delivering the twin objectives of settlement and contact. As we have seen, three quarters of parents reached an agreement after less than an hour of professional input. Some cases eluded settlement, and some subsequently returned to court, but the majority of cases reached an agreement, even if usually with some extra follow through. Conciliation also delivered, or was followed by, significantly more children having significantly more contact.

Strategies

The relative success of in-court conciliation in achieving settlement and contact is not an accident. The courts and the professionals involved have evolved highly effective and efficient methods of processing or channelling cases in pursuit of these goals. We'll outline how three strategies or approaches, each identified in the earlier study by Davis and Pearce, were deployed in our three areas. We'll discuss in turn professional 'hybridity' and fail-safe systems, the shadow of the law and the focus on the future not the past.

Fail-safe systems

Davis & Pearce (1999d) identified that an important component of the settlement culture was the extent to which different professional groups within the family justice system had evolved to share common values, goals, roles and behaviour. This professional hybridity was strongly evident in our study. Each professional group – lawyers, judges, social workers – took on the conciliator role at some point. It was also noteworthy that the lead mediator role was occupied by different professions in each area – by a social worker in Essex, by a judge in the PRFD and by a combination of judge and social worker in Cambs.

However, the issue goes beyond sharing of values, roles and behaviour. What was also clear was that each area had evolved a total network solution, or fail-safe system, where parents were steered towards an agreement, with each professional group playing its part at different levels of the system. For the easier cases the expectation was that the lawyers would broker an agreement early on:

> *"I mean there are certain cases where it doesn't take a great deal to sort of get to an agreement, in which case we can do that, but others where they are more intractable then there's CAFCASS."* Lawyer 4

If the case reached the 'CAFCASS stage' the shared professional expectation was that lawyers would then 'prepare' their clients for settlement. Once negotiations started, both CAFCASS officers and judges also expected lawyers to manage clients who were resisting settlement. Lawyers, therefore, could be brought back into play to back up the work of other professions:

> *"You can actually say 'Go out and have a chat with your solicitor'. So the solicitor gives them [clients] a dig in the ribs and tells you 'Well you really are going to have to go along with this' … There are different ways of moving them [parties] on."* CAFCASS 3

For the most difficult cases, where parents had 'unreasonable' expectations, the District Judge remained available in reserve as the heavy artillery:

> *"If both of their proposals are more or less reasonable, then CAFCASS will be able to gently talk them [the parties] round. If they can't, then the intervention from the Bench becomes a little more directive."* District Judge 6

In each area, therefore, the three different professions largely operated as a united front, with shared values and goals, within a fail-safe system where the heat could be turned up successively by each professional in pursuit of settlement.

Shadow of the law

The second strategy, or tactic, again previously identified by Davis & Pearce and others, is the use of the shadow of the law (Mnookin & Kornhauser, 1979) as a second back stop. What this meant was that the parties were bargaining, and were informed that they were bargaining, within fairly narrow parameters of what usually happens in conciliation, or what would happen anyway if they did not reach agreement.

Each professional group was involved in transmitting these messages about bargaining entitlements to parents. Lawyers were very important in terms of briefing parents on the rules of the game. But CAFCASS officers could also spell out the legal norms quite explicitly, where necessary:

> *"You're trying to establish clear principles [with the parties] which your experience tells you the Court will listen to and adhere to, while at the same time acknowledging that these parties are having some difficulty with accepting those principles. But that ultimately that's what will happen whether they like it or not. Sometimes you have to say 'Well the Court will be looking to pursue this course of action' [i.e. contact]. And I think if you can establish a principle, a common sharing of the principles, then really what we're talking about the majority of the time is detail…"* CAFCASS 3

The shadow of the law could come close to the situation of giving a ruling without the bother of the trial:

"The other thing which I think advocates - solicitors, barristers - and the court welfare officers I think have a duty to do is to provide guidance as to what orders the judge is likely to make. Now of course different judges will view a particular set of facts in different ways, but there are usually fairly clear parameters within which a judge is likely to be making an order, and … it doesn't hurt to be in no doubt as to what is the likely outcome…. I will certainly not be averse at that stage to spelling out what a likely order is, making it clear that I obviously cannot try the case, but from my own experience express my clear and unequivocal view." District Judge 7

Future not the past/reason not emotion

The third strategy to achieve agreement (and contact) was to retain tight control of the conciliation agenda. We have already seen that conciliation is a very brief, time-limited intervention. Even within that short intervention, however, the agenda was carefully managed by the professionals to focus on the future not the past (and see Davis & Pearce, 1999a). What was meant by 'the past' appeared to be very widely defined to encompass parents' recent as well as more historic concerns about the behaviour and attitudes of their former partner.

The interviews with professionals provided two main reasons for focusing on the future not the past, both related to the goal of settlement and contact. The first was that focusing on 'the past' was likely simply to inflame conflict and therefore to block settlement. Instead, therefore, all the three professional groups sought to orientate parents towards addressing a future of how contact would happen, rather than 'dwelling' on the past. This focus was as evident amongst judges as lawyers:

"I think that wherever possible we should be drawing a line under the past and trying to be constructive for the benefit of the child for the future … close the door on the past and try and guide people forwards to the future." District Judge 7

"The ineffective ones [FCAs] allow the parties to take control of the interview, as it were, and let them carry on harping on about what their beefs are about what's gone on in the past. I don't think that is at all helpful, because you are there for the future not for what's gone on previously …" Solicitor 3

The second reason for focusing on the future was that it was simply not possible to determine the truth of past happenings, even if parents might wish to press for endorsement of their version of events (Smart et al 2005). A CAFCASS officer very neatly encapsulated this distinction between the relativist position of the courts and the typically more absolutist position of parents:

> *"I'm against the past on the basis that we don't have space to counsel people in the session, neither is it in my view appropriate. And often people want to say – and I can understand it – is they want to convince you that because of this past thing they are right. And I often say to people 'I don't know where the truth lies in your version or your version, and it doesn't matter to me. It's not going to help us today'. And I know that's quite a hard concept sometimes, but I think it's the only way to deal with the future. I can't make a judgement on the past. Can't put things right. I can see that they want to get it all out in the air, but maybe they need to do it somewhere else."* CAFCASS 6

Set against this backdrop of common professional values, a seamless, near circular, system, clear legal norms and the tight control of the conciliation agenda, it is perhaps not surprising that so many parents reached agreement, nor that contact was restored or extended in so many cases.

Limitations: standard case processing

So far we have identified that family justice professionals work seamlessly and fairly efficiently to channel parents towards settlement and therefore contact. In many respects the courts were operating a standard case processing approach where cases are moved inexorably, and fairly swiftly, along a well-established path to an outcome framed within fairly narrow parameters. This was not lost on the parents:

> *"It was rushed, purely, well it was stereotyped, basically it was like a job, people do a job don't they and it's like one after another and basically it was being dealt with like one after another....it felt like a conveyer belt, it didn't feel like I was being dealt with as an individual."* NRF, Essex

In many circumstances the swift, future-orientated process can be effective and is indeed what parents want. But there are significant limitations and problems with this approach. These are:

- The process does not address the key factors that make contact work for children, that is co-parenting and parenting capacity.
- The pressure to agree can be excessive.
- Concerns about safety can be minimised, or excluded, rather than addressed.
- Children are not involved appropriately in the process.

We will consider each of these in turn.

Moving on or moving out?

The messages from social science research give a clear message that it is good contact, not any contact, that supports children's adjustment post-separation (see Introduction). Good contact requires parental collaboration, managed conflict and warm and authoritative parenting. Ongoing parental conflict, particularly surrounding the child, and actual, or alleged, parenting deficits are likely to be make contact a very fraught and difficult experience for children. Indeed it is possible that without some improvement in parental collaboration, the sole goal of achieving contact simply places, or keeps, children in the middle of a war zone and may be more damaging than if contact did not occur.

However the family courts have historically focused on what is within their power to achieve, that is, to reach a settlement rather than necessarily seeking a resolution to a conflict (Davis & Pearce, 1999c). In effect what the court does is to concentrate exclusively on providing a dispute resolution process addressing contact timetables. The focus is not on understanding, or addressing, the wider circumstances surrounding the dispute. Indeed, as we have seen, any attempt to address emotions, or problems or issues was seen by some professionals as potentially derailing the prospect of settlement.

It is important to point out that for some parents focusing on the future was helpful and what they themselves wanted. Indeed only a quarter of parents had reported that there had not been enough time to deal with the past (Chapter 6). This future-orientated, task-focused position did find favour with those parents who were ready and able to 'move on' in terms of reaching an agreement:

> *"He [FCA] was quite good, you know. He was quite good actually not allowing us to actually have a battle, because, you know, there's a lot of history between myself and [ex-partner]"* Resident mother, PRFD

Reaching some form of settlement was very important in many cases. Parents who had reached an agreement were indeed significantly happier than those who had not. Parents where the case was closed at follow up were also significantly happier, and coping better, than those parents whose case was ongoing.

However, moving on in terms of reaching an agreement and re-establishing, or expanding, contact falls a long way short of moving on sufficiently to be able to work effectively together as parents and to make contact work for children. As we saw in

Chapter 7, very few parents reported improvements in contact problems and the parental relationship, and those who did were more likely to have been easier cases to start with. Contact was more established, but few parents had really moved on emotionally or resolved their conflict.

Although some professionals expressed the hope that the conciliation meeting would help parents to communicate more effectively in future, there is no obvious mechanism through which this can be achieved. The conciliation meeting is very short and is kept to a very tight agenda. The narrow focus of the session means that the discussion only really encompasses the future in terms of how much contact will happen and not how, from this point forward, parents could work together, support children or incorporate children's perspectives into contact plans. In our study few parents recalled having been given information or advice about children's needs or about how to work together as parents. Only a handful reported that they had a greater understanding of their ex-partner's perspective after the session. None had the opportunity to develop new skills. Many reached agreement and left the court still locked in conflict, without having the chance to offload, to work through their concerns, or to have been able to stand back and reflect on alternative takes on the situation. This means, however, that the very real underlying issues of deep mistrust, miscommunication and mutual antipathy are set aside or blanked, rather than worked through. This does not make the conflict go away, nor does it bode well for the long-term stability (or potential adaptability) of agreements.

Pressure and coercion

There have long been concerns that ICC is potentially coercive. We found mixed results on the degree of pressure exerted. Probably all parents experienced at least some pressure to reach agreement. This could come from a variety of sources: a lawyer, CAFCASS officer, judge, the former partner or the parent's own desire to reach an agreement. In some cases, a degree of pressure was acceptable:

> *"I did feel slightly pressured, but I wouldn't say a lot. I think we came to the agreement, but she [FCA] was just pushing us. Maybe if we were both in the middle ground she was trying to push us together to get an answer, rather than just leave it. So, yes, I'm sure she did a little, but not, not in that I've come out of it with something I really hate, you know."* Resident mother, Cambs, full agreement, intact at follow up

In other cases the degree of pressure could result in being rushed into an agreement that was later regretted:

"It's such a hard thing because you start questioning yourself what the best interests of the children are .... I ended up agreeing to things that I felt I shouldn't have been agreeing to. I felt I needed time away to really think about the situation, but I felt pressurised." Resident mother, Cambs, partial agreement followed by fresh application

"There must have been part of me that wanted to come away with something and I think that I felt obliged to accept, I felt to obliged to enter into an agreement however wrong I felt it was, because in my mind, I think, an agreement was better than no agreement. There was an element of dominance on her part in our relationship and I daresay that an element of that carried over into this kind of arrangement… I was sitting in the court not wanting to be the one that was frustrating progress and I think if I had said I don't accept that then part of me would have felt that I'd been frustrating the process." Non-resident father, PRFD

In all only about a fifth of parents reported having felt pressured into an agreement. However, a higher proportion of those reaching agreement were dissatisfied with the agreement they had signed up to, with less than half reporting that the agreement was wholly in the children's interests.

Dealing with risk

A wide range of concerns about risk to children and adults were raised in the research interviews. To recap:

- At baseline 43% of parents had had concerns that the other parent was too harsh or might physically harm the child. This figure was virtually unchanged at follow up.
- At baseline 43% reported a fear of violence. This had dropped at follow up, but was still reported by 35% of parents.
- Just over a quarter (29.4%) of the sample cited domestic violence or emotional abuse as a reason for the separation, including 42% of women.
- A fifth (22%) of resident parents reported that there had been an injunction in the case at some stage.

The level and range of concerns is very similar to other recent research studies (e.g. Buchanan *et al.,* 2001).

In contrast, to the frequency with which parents raised concerns, the risk assessment and risk management procedures were very limited. There was no routine screening of cases before the conciliation meeting. The onus was on lawyers, if parties were represented, to flag up any concerns about risk. In all three areas there was a presumption that meetings would be joint. Parents had to actively opt out of a joint

meeting. Shuttle mediation was rare and there were only one or two instances in our sample.

Similarly, there were far fewer cases where risk was actively assessed or managed than there were cases where parents raised concerns in the research interviews (and see Smart et al, 2003). Only 20 parents (8.1%) reported that a welfare report had been ordered. Only 13.4% of agreements included an element of supervision. Most of these took place at a supported contact centre and were usually set up on a time-limited trial basis as a means to restart contact. Supervision was even less common at follow up, with only six parents reporting any level of supervision, only two of which were at a supervised contact centre.

We were not in the position to be able to identify whether parent perceptions of problems would be substantiated. However, the gap between the frequency of parental concerns and the frequency of risk management measures does seem very wide indeed and may reflect a broader reluctance of the family justice system to address risk (e.g. Smart & Neale, 1997; Bailey-Harris et al 1999; Children Act Sub-Committee, 1999).

The future-looking focus of conciliation and the pro-contact presumption may make it more difficult for concerns to be raised and to be taken seriously. Certainly some parents, particularly resident parents, felt frustrated that their concerns were dismissed:

> *"I felt when I tried to say what was happening I was shut up and I think, well am I behaving badly, am I overanxious, you know. It's almost like a game where the person who expresses the least emotion is more likely to be believed. I think it's ridiculous"* Resident mother, Essex, allegation of intravenous drug use and threats of violence by the non-resident father

> *"I felt nobody was listening to what [child] had been through, and I was told by my solicitor that the conciliator wasn't interested in history, wasn't interested in the past, was just interested in moving on, and I felt quite frustrated. I don't want to keep bringing the past up, but I feel that it was a real big bearing on what was going on and I didn't have the opportunity to put that across without seeming difficult."* Resident mother, Essex, allegations of past sexual abuse.

The interviews with professionals, district judges in particular, did give the impression that risk, particularly domestic violence was exceptional, and certainly nothing like as frequent as reported by parents to the researchers. The following comments capture this sense of risk or violence as being exceptional:

> *"I think that if there are welfare issues, violence and abuse, mother's living with a schedule 1 offender, right? If there are serious issues like that then that's got to be looked into properly."* District Judge

> *"Where there has been something like severe sexual abuse, or that sort of thing, then yes I think, I think possibly it's [conciliation] not going to work and it's because of what's happened so the parties are not, just not going to be able to conciliate."* Solicitor

Even where a 'serious' risk was identified there was a sense in which the response was to reconsider the appropriateness of a joint conciliation meeting, but not to seriously question the contact presumption. Again, this message came through quite strongly from the district judges:

> *"Even with domestic violence the evidence is that in those cases we can sort something out. I'm aware of course of the Court of Appeal authorities on the subject of domestic violence, but I think it's still quite rare for domestic violence to be so much an issue that it prevents contact……I suppose this business of raising issues [gateway forms], I ask rhetorically are we really in the business of, or required to invite people to raise negative points and I really don't see it. I think that we should be looking always at the positives wherever we can rather than the negatives. The fact is that in the vast majority of relationships, whether the parents are married or whether they are not married, there will be problems, sometimes quite significant problems but is that of itself a reason for denying contact?"* District Judge

Indeed, the contact presumption, could actually become a self-fulfilling prophesy that could trump any allegations of risk:

> *"I think we're lucky that domestic violence isn't a major factor in Children Act cases in this Court. We do see it, but nothing like inner city cases where I think it's much more serious and much more prevalent … I have to say I do try and steer the parties away from the past, I tend to say 'look, statistics show that there is a very high likelihood that there is going to be contact. At the end of the day the Court is going to order contact, so the more fruitful exercise is to concentrate on how that contact is going to progress'".* District Judge

Whilst the future focus is probably helpful in cases where there are no concerns about risk, otherwise the future focus can preclude concerns being raised, heard, assessed and managed. The levels of concern raised by parents in our research may be exaggerated or inflated, but they are consistent with other studies. It is also worth noting that in a carefully-conducted study in California (Johnston et al 2005), the researchers found evidence to substantiate allegations of abuse in 51% of child custody-disputing cases[22]. Similar rates for substantiation have been reported in other

[22] Including abuse against adults and children and alleged against mothers and fathers. The researchers did not attempt to distinguish between unsubstantiated allegations that were clearly false and those for which there was insufficient evidence.

US and Australian studies (see Johnston et al 2005 for a review). However, even if concerns are not ultimately substantiated, all concerns raised by resident or contact parents need to be raised and assessed and then managed, if necessary, rather than deflected.

The introduction of the new gateway forms in 2005 should make an important contribution to ensuring courts have more information to make an initial assessment of risk. It remains to be seen how effective the forms are in eliciting information from parents or how the family justice system will balance the requirement to manage risk, the need to reduce delay in proceedings and a strong settlement and pro-contact orientation.

The role of children

At present views about the appropriate involvement of children in private law proceedings are highly polarised. Our comments on the involvement of children are based only on our own observations and interviews with parents and professionals, not children themselves.

Nevertheless, the approach of each area to the issue appeared to us to be unsatisfactory although for entirely different reasons. In Essex and Cambs children were not included in the process at all. This will require rethinking.

Alternatively, at the PRFD children of nine and over were required to attend court. There seemed to us to be a number of serious problems with the approach. These are, in summary:

- We have serious concerns about whether it is appropriate for children to be interviewed on court premises. Family courts are highly stressful, pressured and unfamiliar environments with few, if any, facilities for children.
- The very task-focused approach of conciliation risks placing responsibility for decision making, or resolving the dispute, on children's shoulders. Children are typically seen for a very short interview which inevitably seeks views on the (adult-defined) matters in dispute. Our observations and interviews with professionals confirmed that what children say is often highly influential in determining the outcome, even down to specific details of the contact timetable. It is worth noting that children are not interviewed if the parents are able to reach agreement, suggesting that children's involvement relates to an inability to break an adult

- impasse rather than a general principle that all children should have their say. Whilst some children will welcome the opportunity to determine, or at least strongly influence the outcome, for others this will be an unwelcome burden, or, simply not the issues that are most pressing for that child (Bretherton, 2002).

Summary

The interviews with professionals provided a fresh and broader perspective on the nature and outcomes of in-court conciliation. The importance of the twin goals of settlement and contact, and the strategies used to reach these goals (hybridity, shadow of the law, the future focus), all replicated earlier findings by Davis and Pearce. We also identified some of the strengths and limitations of conciliation, notably the ability to deliver agreements and contact, but also the limited scope to make contact work, to minimise coercion, to address risk and to involve children.

9. Making contact happen? Or making contact work? Conclusions and recommendations

Conclusions

We set out to evaluate the process and effectiveness of in-court conciliation overall as well as the relative effectiveness of three different models of conciliation. The results were fairly clear. Some models were better at making contact happen; none of the models were very effective in making contact work. All three models struggled to manage risk, to avoid coercion and to involve children appropriately.

The results offer some surprises as well as familiar messages. It seems the court continues to have resonance or authority for the majority of parents, despite recent media messages suggesting that court decisions are consistently ignored or flouted. Nor was there much evidence of bias against non-resident parents. In fact, the majority of non-resident parents reported that professionals were impartial and non-resident parents were more likely to be satisfied with agreements than resident parents.

Nonetheless, our core messages do resonate with previous research. Firstly, the specific type of conciliation does make a difference to both satisfaction with the process and the agreement rate. Our finding that the high-judicial control scheme (the PRFD) had poorer outcomes than the low-judicial control or mixed schemes replicates the earlier study by Ogus et al (1989).

The second, and perhaps the most important finding, is that conciliation is effective in reaching agreement and ensuring contact happens, but, *regardless of model*, has limited impact on the key co-parenting factors that will make contact work for children. This in itself should not come as a surprise. The service that parents receive is very brief and is not designed to address relationship issues. Smart & May (2005:2), describing the Children Act 1989, comment that “The legislation has not succeeded in providing highly conflicted parents with the means of changing their behaviour; it only exalts them to do things differently.” This could equally apply to conciliation.

The limited impact on relationship factors again replicates earlier research on conciliation. Previous studies have also reported little impact on parental communication and collaboration (Pearson & Thoeness,1988; Ogus et al, 1989). It

seems that simply providing a dispute resolution process does not in itself have further interpersonal or communicative or therapeutic consequences. A recent study by Walker et al (2004) also found little improvement in communication or shared decision making amongst former clients of out of court mediation, even where a full agreement had been reached.

Finally, we identified significant problems with the conciliation process, again regardless of model. In each of the three areas the courts had adopted a standard case processing approach to achieve agreement and contact, echoing the analysis of Davis & Pearce (1999a-d). Whilst the standard model could be appropriate for 'standard cases' the one size fits all approach was ill-suited to dealing with cases raising serious risk issues and could be coercive. The rapid processing of cases and focus on settlement also meant that children were excluded from the process or risked becoming responsible for decisions.

In sum, for a very brief intervention, in-court conciliation does have much to offer as a dispute-resolution process in contact cases. However, in-court conciliation is not suitable for all cases nor is it likely to be sufficient by itself in the majority of cases. The evidence here suggests that conciliation should be available in all courts but within the context of a differentiated case management system (see below). The Essex or Cambs models are likely to be the most effective, although with more rigorous risk assessment procedures and the appropriate inclusion of children.

Recommendations

- *Availability.* In-court conciliation should be available in all family courts.
- *Model.* The development of new services, or adaptation of existing services, should incorporate the features of the Essex and Cambs models rather than that of the PRFD.
- *Differentiated case management system.* It is essential that the development of in-court conciliation occurs only as part of a differentiated case management system and integrated service model. Conciliation is not suitable for all cases, nor is it sufficient to make contact work. The components of a differentiated case management system would be:

- Triage phase. Preliminary screening and risk assessment of all applications. Cases involving serious allegations to be handled in a separate fast-track management system such as the Family Court of Australia's Magellan project (Brown, 2002). 'High conflict' or perpetual litigants to be transferred to a specialist programme such as the Alameda project (Johnston & Campbell, 1988).
- Dispute resolution process. Incorporating features of the low-judicial control schemes and/or referral to out of court mediation.
- Child programme. The Australian Children in Focus project combines 1-2 meetings (away from court) between children aged five and over and a specially trained child consultant. The consultant then feeds back to parents the child's worldview (and not just the issues of concern to the adults) with the aim of supporting parent's capacity to hear the child and focus on the child's needs on a long-term rather than one-off basis (Macintosh et al 2004). These kinds of programmes offer children both support and a voice, and are more likely to support children's decision making over the longer-term beyond the court case.
- Co-parenting programme. There are a range of programmes that have been developed in North America and Australia that may help build parent's capacity to collaborate (see Hunt, forthcoming). These should be available to all parents, alongside a dispute resolution process, with the aim of increasing the prospect of making contact work.
- Post-conciliation support. Some families will require ongoing support and trouble-shooting to bed down or adapt an agreement. The plans to re-orientate the role of CAFCASS towards post-order support outlined in the Children (Contact) and Adoption bill are welcome.

Bibliography

Amato, P. & Gilbreth, J. (1999) Nonresident fathers and children's well-being: a meta-analysis. *Journal of Marriage & The Family*, 61 (3): 557-73.

Bailey-Harris, R, Barron, J, and Pearce, J (1999), 'From Utility to Rights? The Presumption of Contact in Practice', *International Journal of Law, Policy and the Family*, 13, 111-131.

Bretherton, H. (2002) Because it's me the decisions are about - Children's experiences of Private Law proceedings, *Family Law*, June, 450-457.

Brown, T. (2002) Magellan's Discoveries. *Family Court Review*, 40, 320-328.

Buchanan, A., Hunt, J., Bretherton, H. & Bream, V. (2001) Families in conflict: The Family Court Welfare Service: the perspectives of children and parents. Bristol: The Policy Press.

Children Act Sub-Committee of the Lord Chancellor's Advisory Board on Family Law (1999) *Contact Between Children and Violent Parents.* London: Lord Chancellor's Department.

Children Act Sub-Committee of the Lord Chancellor's Advisory Board on Family Law (2002) *Making Contact Work: A Report to the Lord Chancellor.* London: Lord Chancellor's Department.

Davis, G. (1988) 'The Halls of Justice and Justice in the Halls'. In R. Dingwall & J. Eekelaar (Eds.) *Divorce Mediation and the Legal Process*. Oxford: Clarendon Press.

Davis, G., Bevan, G., Clisby, S., Cumming, Z., Dingwall, R., Fenn, R., Finch, S., Fitzgerald, R., Goldie, S., Greatbatch, D., James, A. & Pearce, J. (2001) *Monitoring Publicly Funded Family Mediation. Report to the Legal Services Commission.* London: Legal Services Commission

Davis, G. & Pearce, J. (1999a) 'The welfare principle in action'. *Family Law*, 29: 237-241.

Davis, G. & Pearce, J. (1999b) 'On the trail of the welfare principle'. *Family Law*, 29: 144-148.

Davis, G. & Pearce, J. (1999c) 'A view from the trenches – Practice and procedure in section 8 applications'. *Family Law*, 29: 457-466.

Davis, G. & Pearce, J. (1999d) 'The hybrid practitioner'. *Family Law*, 29: 547-555.

Department for Constitutional Affairs (2004) *The Private Law Programme.* London: DCA.

Dewar, J. & Parker, S. (2000) English Family Law since World War II: From Status to Chaos. In S. Katz, J. Eekelaar & M. Maclean (Eds.) *Cross Currents: Family Law and Policy in the US and England*. Oxford: Oxford University Press.

Dingwall, R. & Greatbatch, D. (1993) Who is in charge? Rhetoric and reality in the study of mediation. *Journal of Social Welfare and Family Law* , 15: 367-85.

Dunn, J. & Deater-Deckard, K. (2001) Children's views of their changing families. York: Joseph Rowntree Foundation.

Goldberg, D. & Williams, P. (1988) *A users guide to the general health questionnaire.* Windsor: NFER-Nelson.

Goodman, R. (1997) The Strengths and Difficulties Questionnaire: a research note. *Journal of Child Psychology and Psychiatry*, 38 (5): 581-6.

Home Office (2001) Probation Statistics: England and Wales 1999. London: Home Office.

Hunt, J. (2003). *Researching Contact.* London: National Council for One Parent Families

Hunt, J. (forthcoming) *Intervening in litigated conflict after parental separation or divorce: ideas from other jurisdictions.* Family Policy Briefing 4. Oxford: University of Oxford.

Johnston, J. & Campbell, L. (1988). *Impasses of divorce: The dynamics and resolution of family conflict*. New York: Free Press.

Johnston, J., Lee, S., Olesen, N. & Walters, M. (2005) Allegations And Substantiations Of Abuse In Custody-Disputing Families, *Family Court Review*, 43, 283–294.

McIntosh, J., Long, C. & Moloney, L. (2004) Child-Focused and Child-Inclusive Mediation: A Comparative Study of Outcomes, *Journal of Family Studies, 10, 87-95.*

Mantle, G. (2001) Helping Parents in Dispute: Child-centred mediation at county court. Aldershot: Ashgate.

MCSI (2003) Seeking Agreement. A Thematic Review by MCSI of the operation of schemes involving CAFCASS at an early stage in private law proceedings. London: MCSI.

Mnookin, R. & Kornhauser, L. (1979) 'Bargaining in the Shadow of the Law: The Case of Divorce', *Yale Law Journal,* 88, 950-77.

Ogus, A., Walker, J., Jones-Lee, M., Cole, W., Corlyon, J., Ingham, T., McCarthy, P., Simpson, B. Wray, S. (1989) *The Costs and Effectiveness of Family Conciliation In England and Wales, Report to the Lord Chancellor.* London: Lord Chancellor's Department.

Pearce, J., Davis, G. and Barron, J. (1999) Love in a Cold Climate – Section 8 Applications under the Children Act 1989. *Family Law,* 29, 22-28.

Pearson, J. & Thoeness, N. (1988) 'Divorce Mediation: An American Picture'. In R. Dingwall & J. Eekelaar (Eds.) *Divorce Mediation and the Legal Process*. Oxford: Clarendon Press.

Rodgers, B. & Pryor, J. (1998) *Divorce and separation: the outcomes for children.* York: Joseph Rowntree Foundation.

Secretary of State for Constitutional Affairs, Secretary of State for Education and Skills and Secretary of State for Trade and Industry (2005) *Parental Separation: Children's Needs and Parents' Responsibilities: Next Steps*. Cm 6452. London: Stationery Office.

Smart, C., May, V., Wade, A. & Furniss, C. (2003) *Residence and contact disputes in Court – Volume 1* (Research Series 6/03). London: Department for Constitutional Affairs.

Smart, C., May, V., Wade, A. & Furniss, C. (2003) *Residence and contact disputes in Court – Volume 2* (Research Series 4/05). London: Department for Constitutional Affairs.

Smart, C. and Neale, B. (1997) 'Arguments against virtue: must contact be enforced?' *Family Law* , 27, 332-336

Thoennes, N. & Pearson, J. (1985) Predicting Outcomes in Divorce Mediation: The Influence of People and Process, *Journal of Social Issue*s, 41, (2): 115-126.

Walker, J., McCarthy, P. & Timms, N. (1994) *Mediation: the making and remaking of co-operative relationships*. Newcastle: Relate Centre for Family Studies.

Walker, J. *et al.* (2004) *Picking Up The Pieces: Marriage and Divorce Two Years After Information Provision*. London: Department for Constitutional Affairs.

Whiteside, M.F., & Becker, B.J. (2000). Parental factors and the young child's postdivorce adjustment: A meta-analysis with implications for parenting arrangements. *Journal of Family Psychology*, 14, 5–26.

Wolchik, S., Fenaughty, A. & Braver, S. (1996) Residential And Nonresidential Parents' Perspectives On Visitation Problems. *Family Relations*, 45 (2): 230-8.

Appendix 1. The follow-up sample

	Overall (n = 250)	**Not followed up (n=75)**	**Followed up (n = 175)**	***p*-value***
	%	%	%	
Applicant	51.2	52.0	50.9	.489
Male	50.0	48.0	50.9	.391
Non-resident parent	45.2	45.3	45.1	.543
Legal aid eligible	52.0	62.7	47.4	.019
Married	59.2	53.3	61.7	.137
Domestic violence or emotional abuse cited as a reason for the separation	29.4	33.8	27.6	.203
Previous application	36.0	33.3	37.1	.335
Contact occurring at application	72.8	65.3	76.0	.058
Parental relationship quality (fair or quite good)	15.6	20.0	13.7	.144
Satisfied with the conciliation process overall	49.6	50.7	49.1	.467
Full or partial agreement	72.4	68.0	74.3	.193
Satisfied with the overall outcome of the case	50.8	47.3	52.3	.279
	Overall n=181	N=51	N=130	
Satisfied with the agreement	62.4	62.7	62.3	.549
	Overall n=209	N=60	N=149	
GHQ below the threshold	29.7	26.7	30.9	.335

		Overall (n = 250)	**Not followed up (n=75)**	**Followed up (n = 175)**	**p-value***
Shared decision making scale	Mean (SD) Median	4.29 (2.530) 3	4.31 (2.536) 3	4.29 (2.535) 3	.653

Appendix 2. Regression analysis

A - 2a: Ordinal regression of the likelihood of parents not reaching an agreement (pre-court characteristics only)

	Coef.	Robust Std. Err.	z	P>z	[95% Conf.	Interval]
Area (reference category = Essex)						
PRFD	1.597934	.3816234	4.19	0.000	.8499656	2.345902
Cambs	.7749176	.3447354	2.25	0.025	.0992488	1.450587
Non-resident parent	-.0681962	.244164	-0.28	0.780	-.5467489	.4103565
Legal aid eligible	.1125504	.2982428	0.38	0.706	-.4719947	.6970955
Previous application	-.0622273	.3182263	-0.20	0.845	-.6859393	.5614847
Contact occurring (last six months)	.0201141	.3616671	0.06	0.956	-.6887404	.7289687
Relationship quality (quite good or fair)	.26853	.398647	0.67	0.501	-.5128038	1.049864
Injunction (never)	-.483092	.3451372	-1.40	0.162	-1.159548	.1933644
Time since separation	-.0006962	.0068136	-0.10	0.919	-.0140506	.0126582

Number of observations = 250

A - 2b: Ordinal regression of the likelihood of parents not reaching an agreement (including process perceptions)

	Coef.	Robust Std. Err.	z	P>z	[95% Conf.	Interval]
Area (reference category = Essex)						
PRFD	1.390399	.3652191	3.81	0.000	.674583	2.106216
Cambs	.8035009	.3543662	2.27	0.023	.108956	1.498046
Non-resident parent	-.0042872	.2703988	-0.02	0.987	-.5342592	.5256848
Legal aid eligible	.0838626	.2988793	0.28	0.779	-.50193	.6696552
Previous application	-.0701752	.3245824	-0.22	0.829	-.706345	.5659946
Contact occurring (last six months)	.0889177	.3622693	0.25	0.806	-.621117	.7989525
Relationship quality (quite good or fair)	.4797153	.3947465	1.22	0.224	-.2939736	1.253404
Injunction (never)	-.3905002	.3541771	-1.10	0.270	-1.084675	.3036742
Time since separation	-.0011526	.0069177	-0.17	0.868	-.014711	.0124058
Focus on the child	-.0777202	.0464777	-1.67	0.094	-.1688149	.0133744
Emotional tone	.0000119	.0400709	0.00	1.000	-.0785257	.0785495
Having your say	-.0448269	.063506	-0.71	0.480	-.1692963	.0796426
Educational/advice-giving component	-.0569377	.0457735	-1.24	0.214	-.1466521	.0327768
Understanding the other's viewpoint	-.038832	.1075242	-0.36	0.718	-.2495755	.1719116

Number of observations = 237

A - 2c: Logistic regression of the likelihood of parents being satisfied with the agreement at baseline

Candidate independent variables:

- Area
- Agreement level
- Non-resident parent
- Legal aid eligible
- Previous applications
- Contact occurring six months pre-application
- Relationship quality (fair or quite good)
- Time since separation
- Injunction (never)

	Coef.	**Robust Std. Err.**	**z**	**P>z**	**[95% Conf.**	**Interval]**
Agreement level (partial)	-.8729388	.307447	-2.84	0.005	-1.475524	-.2703538
Non-resident parent	.825965	.3333312	2.48	0.013	.1726479	1.479282

Number of observations = 181

A - 2d: Logistic regression of the likelihood of parents being satisfied with the overall outcome of the case

Candidate independent variables:

- Area
- Agreement level
- Non-resident parent
- Legal aid eligible
- Previous applications
- Contact occurring six months pre-application
- Relationship quality (fair or quite good)
- Time since separation
- Injunction (never)

	Coef.	**Robust Std. Err.**	**z**	**P>z**	**[95% Conf.**	**Interval]**
Full agreement	1.859968	.330625	5.63	0.000	1.211955	2.507981
Partial agreement	.8488864	.3584729	2.37	0.018	.1462924	1.55148

Number of observations = 246

A - 2e: Logistic regression of the likelihood of the agreement being intact or extended at follow-up

Candidate independent variables:

- Area
- Agreement level
- Non-resident parent
- Legal aid eligible
- Previous applications
- Contact occurring six months pre-application
- Relationship quality (fair or quite good)
- Time since separation
- Injunction (never)
- Agreement satisfaction (time one)

	Coef.	**Robust Std. Err.**	**z**	**P>z**	**[95% Conf.**	**Interval]**
Full agreement	-.8607486	.4803806	-1.79	0.073	-1.802277	.08078
Legal aid eligible	-.7762703	.4339279	-1.79	0.074	-1.626753	.0742127

Number of observations = 115

A - 2f: Logistic regression of the likelihood of the case being closed at follow-up

Candidate independent variables:

- Area
- Agreement level
- Non-resident parent
- Legal aid eligible
- Previous applications
- Contact occurring six months pre-application
- Relationship quality (fair or quite good)
- Time since separation
- Injunction (never)
- Satisfaction with the overall outcome of the case (time one)

	Coef.	**Robust Std. Err.**	**z**	**P>z**	**[95% Conf.**	**Interval]**
Full agreement	2.056743	.5508385	3.73	0.000	.9771196	3.136367
Relationship quality (quite good or fair)	2.67481	1.041154	2.57	0.010	.6341845	4.715435
Partial agreement	.9734071	.4872867	2.00	0.046	.0183427	1.928471

Number of observations = 172

A - 2g: Logistic regression of the likelihood of parents being satisfied with the agreement/arrangements at follow-up
(baseline variables only)

Candidate independent variables:

- Area
- Non-resident parent
- Legal aid eligible
- Previous applications
- Contact occurring six months pre-application
- Relationship quality (fair or quite good)
- Time since separation
- Injunction (never)

	Coef.	Robust Std. Err.	z	P>z	[95% Conf.	Interval]
Relationship quality (quite good or fair)	1.086636	.4737673	2.29	0.022	.1580693	2.015203

Number of observations = 175

A -2h: Logistic regression of the likelihood of parents being satisfied with the agreement/arrangements at follow-up
(baseline, immediate outcome and follow up variables)

Candidate independent variables:

- Area
- Agreement level
- Non-resident parent
- Legal aid eligible
- Previous applications
- Contact occurring six months pre-application
- Relationship quality (fair or quite good)
- Time since separation
- Injunction (never)
- Satisfaction with the overall outcome of the case (time one)
- Amount of contact at follow up
- Agreement at follow up
- Case closed at follow up

fallhapp_01	Coef.	Robust Std. Err.	z	P>z	[95% Conf.	Interval]
Case closed	1.745712	.4663365	3.74	0.000	.831709	2.659715
Agreement at follow up	1.446587	.4809558	3.01	0.003	.5039307	2.389243
Satisfied with overall case outcome at time 1	.8450569	.3495534	2.42	0.016	.1599448	1.530169

Number of observations = 171

DCA Research Series No. 3/06

Making contact happen or making contact work?
The process and outcomes of in-court conciliation

In-court conciliation is a form of dispute resolution used in the early stages of contested private law proceedings. This report presents the findings from a study that aimed to identify the effectiveness of three different models of in-court conciliation. Based on structured interviews with 250 parents at baseline and 175 parents at a six month follow up, the study reports on:

- agreement rates;
- satisfaction with the conciliation process;
- satisfaction with agreements and outcome of the case;
- agreement durability and relitigation; and
- impact on contact patterns, contact problems, shared decision-making and parent and child wellbeing.

For further copies of this publication or information about the Research Series please contact the following address:

Department for Constitutional Affairs
Research Unit
Selborne House
54 Victoria Street
London SW1E 6QW

Tel: 020 7210 8520
Fax: 020 7210 0693
E-mail: research@dca.gsi.gov.uk
http://www.dca.gov.uk/research