

# **Rights and needs in post-separation contact disputes: a PhD research study in progress**

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## **Introduction**

Contact has been a major theme of family law over the last two decades and has been high on the agenda since the Government report, *Making Contact Work* (2002). More recently, the Green Paper *Parental Separation: Children's Needs and Parents' Responsibilities* (2004) has brought to the forefront the role of the law in helping parents resolve contact disputes.

Since the Children Act 1989, ideas about children's interests have become well-established in a prevailing welfare discourse in family law. Under the Act, contact was established as the right of the child with 'parental rights' reconstructed as parental responsibilities. There is some debate on how and on what basis the balance can be struck between the interests of children on the one hand and adults on the other (Bainham 1998, 2001, Eekelaar 2002, Fortin 2002, Herring 1999a, 1999b, Prest 2005). This has led to speculation about whether current law should be amended to include a statutory presumption of contact as many countries have, and whether this should be expressed in the UN Convention of the Rights of the Child, or should also include the rights of parents, as in the European Convention on Human Rights.

Despite the aim of the Children Act 1989 to reduce conflict, disputes over contact have not diminished and seem hard to resolve. This has led to questions about whether there is something more fundamental about these disputes between parents (Day Sclater & Kaganas, 2003, Kaganas & Day Sclater 2004, Smart et al 2005).

## **The Study**

The research project builds upon emerging research focusing on how and on what basis the balance can be struck between the needs and rights of adults and children, men and women, resident and non-resident parents. The poster presentation outlines the work in progress.

The aim of the project is to conduct detailed empirical research into the ways in which parents (mothers/fathers, resident/non-resident parents) interpret and construct the rights and needs of children post-separation, in relation to their experiences of contact disputes, why they become involved in litigation over arrangements for their children and how they make sense of their experiences in the family justice system. Questions to be addressed include: How do parents conceptualise the needs and rights of children post-separation and to what extent do their discourses mesh or compete? How do parents interpret and position themselves within the child welfare and human rights discourses? To what extent can the needs and rights of children be distinguished from those of parents? What do such analyses help us to understand about contact dispute resolution?

The study design entails intensive qualitative interviews with 16 pairs of separated mothers and fathers, one or both of whom will have made a s.8 contact order application. A theoretical

sample is used to generate a sample divided equally between resident mothers/non-resident fathers and resident fathers/non-resident mothers, to compare and contrast the impact of gender and residential status. Parents were recruited at court in 3 areas of the UK. The sample has been collected as part of a larger intervention study of process and outcome in in-court conciliation. Data was collected via tape recorded interviews. The interviews covered the separation, contact patterns and problems, current court dispute and litigation history, court and ICC experience and outcome. The paired data is being analysed inductively using grounded theory and will be analysed using the NVivo software package. The aim is not to make claims of representativeness but to capture the range of differences between mothers and fathers, resident and non-resident parents.

The research aims to contribute to policy and practice by examining how parents experiencing contact disputes understand and interpret the family law process that will lead to a greater understanding of the impact and effects of legal interventions and decision-making on parents and children. The final thesis is due for submission in 2010.

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