

1KBW

**Family breakup;
the child's experience.
Are we getting
it right?**

CHERRY HARDING

Family breakup; the child's experience. Are we getting it right?

CHERRY HARDING | CHARDING@1KBW.CO.UK

The provision of satisfactory levels of contact for children with a non-resident parent has public health importance.

Parental separation and divorce are a significant risk factor for children both in terms of long-term emotional well-being and educational performance. Greater involvement of non-resident parents (called fathers here for simplicity) in post separation parenting has at least the potential to ameliorate these risks, particularly the risk of depression and other indications of emotional distress.

There has been a significant change over time with greater involvement of non-residential fathers. *Cancian* 2014 and *Fabricus* 2012. There was been an increase of fathers having weekly or more frequent contact from 18% in 1976 to 31% in 2002. In Wisconsin 1980-81 86% of children were placed with their mother and only 2% had shared care arrangements, that is, 30-70% of their time, with a parent. By 2001, placements with mothers were 59% and 32% were in shared placements, reflecting cultural norms. *Fabricus* 2010. A 2012 study by *Bastait* found lower levels of support for children's lives provided by non-residential fathers compared with married fathers and fathers in joint custody. It is clear that contact with no parenting support results in a negative effect on adolescents' emotional symptoms.

Others have proposed that the effects of father's post-divorce involvement on children's adjustment may differ as a function of the broader family context. In particular the level of inter-parental conflict.

Interparental conflict has a negative influence on adolescents' internalising and externalizing problems.

Research in this area is notoriously difficult as it is difficult to see a clear picture where there is high interparental conflict. In some studies greater father contact and support are related to better child adjustment and in some greater father contact and support are related to poorer adjustment.

When children spend more overnights with the father higher positive parenting by the fathers is related to lower mental health problems but when children spend few overnights the relationship between the father's positive parenting and mental health problems is not significant.

Biological parenthood

In Britain, contact orders increased more than fourfold between 1992 and 2008.

The state's emphasis in the interference in family life has been to maintain the indissolubility of biological parenthood.

Progress

Back in 1973 the authors Goldstein, Freud, and Solnit in *Beyond the Best Interests of the Child*, argued that the interests of a child were best served if courts ensured the continuity of a relationship with one "psychological parent" to which the child was already attached. They wrote as professionals trained in the psychoanalytic tradition of psychology. They advised that it was right to minimize disruption in a child's life resulting from the marriage breakdown and that child custody decisions should be made speedily and, once made, should be final. Their controversial views on post separation parenting was at its extreme when they argued that noncustodial parents should have no legally enforceable right of access!

In the early 1980s, social work professor Constance Ahrons, argued that the child's post-divorce family should be regarded as being "binuclear," with the child as a member of two households rather than one. Writing in 1983, she described an emerging trend toward shared custody and co-parenting, and observed that this would have "profound implications for the post-divorce family."

Later, Ahrons described the binuclear family as a form of limited partnership established for a single purpose – to be co-parents to the children. She argued that the partnership agreement, which might have to be renegotiated from time to time as circumstances change, needs to establish rules for how parenting is to be managed across two households and make practical provision for how to deal with, for example, holiday time and illnesses.

The family mediation movement that began to emerge in the late 1970s in the United States was also influenced by the concept that divorce is not the end of the family but the beginning of a new one.

'The Children Act 1989 is part of a trend towards changing the fundamental nature of divorce. Contained within the Act are three newly articulated principles. The first is the principle of "non-intervention." This means that the courts are reluctant to become involved in matters over children and actively encourage parents to negotiate outcomes without the need for a court order. The second is the principle of joint parenting. This means that the old idea of one parent having "custody" and the other having "access" is abandoned in favour of a system where parents simply go on being parents with the same legal duties and obligations as existed during the marriage. The terms custody and access are replaced by residence and contact. The third principle is the welfare of the child. This is not a new principle, but in this Act it has come to be synonymous with the idea of the right of a child to have two parents. This means that joint parenting is meant to be an active sharing of the upbringing of the child in which both parents are as much involved as they were before the divorce. I want to suggest that these new principles have in fact introduced a new marriage contract by another name. This new marriage contract ends the possibility of confluent love for mothers (although not necessarily for fathers) – by which I mean that it ends the possibility of divorce finishing a relationship with a person one no longer loves or cares for.'

Parkinson. *Family Law and the Indissolubility of Parenthood* (p. 203). Cambridge University Press.

A large body of research on outcomes of divorce for children now supports the greater involvement of fathers in children's lives after separation, at least in the absence of violence, abuse, or high conflict. This research indicates that although more frequent contact with the non-resident parent does not *in itself* lead to improved well-being for the children of divorce, children do benefit from a close relationship with the non-resident parent.

The public policy conclusion to be drawn is that if the family is an enduring entity in spite of the breakdown of the parents' relationship, the goal of services set up to support families after separation should be the improvement of the relationship *between parents* so that they will be more likely to cooperate into the future.

Dr Edward Kruk, professor of Social Work at the University of British Columbia has written

'The main purpose of intervention with a family during and after divorce should be the redefinition of family roles, relationships, and boundaries to allow the family to continue as a divorced family system. Intervention should focus primarily on the clarification of boundaries so that the spousal role does not contaminate the parental role, that is, on helping parents to separate their previous marital conflicts from their ongoing parental responsibilities.'

5 elements are proposed in the re-think of how to manage the transition to a *new family*

- (1) Non adversarial dispute resolution mechanisms
- (2) Family disputes are not isolated events
- (3) The goal is not to look back and apportion blame and rights but to look forward to the re-formulation of family re-organisation
- (4) Therapeutic goal for dispute resolution, empowering families to resolve their own issues. Mandatory parenting education programmes as part of this.
- (5) Pre-planning by way of pre-nups, domestic partnership contracts and dispute resolution clauses in parenting plans.

Australia has summarized the intent of its legislature as follows:

In our view, it can be fairly said there is a legislative intent evinced in favour of substantial involvement of both parents in their children's lives, both as to parental responsibility and as to time spent with the children, subject to the need to protect children from harm, from abuse and family violence and provided it is in their best interests and reasonably practicable.

Shared parenting: benefits and risks

Perhaps the most dramatic example of the growth of shared parenting is in Sweden, where equal time, or alternating residence arrangements, have become quite common. In 1984–85, 1 percent of Swedish parents who were living apart had equal time arrangements. By 2006–07 it had increased to 28%. It may well be that one motivation for the popularity of alternating residence for fathers is that they have no need to pay child support if there is an alternating residence arrangement. You might think that this ought to make it less likely that mothers would agree. Parkinson's theory is that the growth in shared care in Sweden is "*much more likely to be the outcome of favourable economic and social welfare conditions that support parents in the workforce, as well as cultural factors.*"

He reports that research on shared care elsewhere indicates much higher levels of stability than in previous studies. In Wisconsin, researchers found that *three years* after the divorce, there had been some reduction in the actual practice of shared care, but 80 percent of fathers with shared care time were still engaged in shared care and 11 percent were looking after the child more than 54 percent of the time. The researchers found also that children in shared care experience living arrangements that are as stable, or more stable, than children in the primary care of their mothers.

In fact *equal time* arrangements have been found to be quite durable. In another large-scale study involving 2,000 separated parents, 60 percent of the children who were in equal care arrangements at separation had the same arrangement four-to-five years later. They were much more durable than unequal shared care arrangements in which the child spent the majority of the time with one parent.

In Australia there has been a substantial increase in shared care in cases decided by judges. Shared care arrangements (35–65 percent of time with each parent) rose from 4 percent to 33.9 percent of cases where contact arrangements were defined.

Prior to the 2006 reforms, 65.2 percent of the mothers had primary care. After the reforms, it was 47.8 percent – a 26.7 percent decrease. Fathers in 30.8 percent of cases had primary care prior to the reforms, and this dropped to 18.3 percent afterward – a 40.6 percent decrease. The reforms have therefore had a major impact on the outcomes of cases decided by judges, with many more shared care arrangements being made, at the expense of both maternal and paternal primary care, but, to a greater extent, at the expense of *paternal* primary care. It seems that fathers may have more to lose, proportionately, than mothers by legislation that encourages judges to consider *shared parenting* arrangements. Is the main issue that women, in particular, will feel *pressured* into accepting a shared care arrangement when they have significant safety concerns for themselves or their children because they feel the system is weighted in favour of shared care.

Parkinson asks the question whether, where shared care is imposed as a compromise in cases that go to court, children are exposed to higher levels of conflict than would have been the case if a clearer choice between maternal and paternal care had been made. He quotes Jennifer McIntosh, an Australian clinical psychologist, “*The attributes that increase the likelihood of shared arrangements working smoothly... are not typically characteristic of parents who litigate or who otherwise require significant support to determine and administer their post-separation parenting plans*”.

While high levels of conflict naturally have an adverse effect on children, whatever the amount of time they spend with the non-resident parent, it is particularly so in shared care arrangements, given the *greater degree of interaction* between parents that is typically involved.

McIntosh found that shared care was itself a risk factor for poor mental health in children where there was high, ongoing conflict between parents. Children are, of course, most likely to benefit from shared care arrangements where there were low levels of hostility.

In Britain when interviewing thirty children and young people in shared care arrangements, *Smart et al* found that for some children, where the arrangement was inflexible and the idea of “equal time” was invested with heavy significance by a parent, it could be very oppressive and constricting. This was particularly so if the parents were *rigid* in maintaining the schedule and not focused on the needs of the children. For the others, the arrangement worked very well and provided benefits not only in having the regular involvement of both parents, but also in giving chances for a brief “sabbatical” in the relationship with each of them as the child moved from one household to the other.

A follow-up of these children was conducted three-to-four years later. *Smart* identified three factors that made the difference between successful and unsuccessful shared care arrangements.

These were:

- (a) whether the arrangement was based on the needs and wishes of the parents or those of the children
- (b) whether the arrangements were flexible enough to accommodate changing needs and circumstances and
- (c) whether the children felt equally “at home” in both of their parents’ homes.

Shared care is contra-indicated with infants and toddlers, if it involves significant periods of separation from the child’s primary caregiver, thereby disrupting a secure attachment.

The significance of the Maternal bond

Research has found no evidence for the assumptions that infants are initially incapable of forming more than one significant attachment and that if more than one adult cares for a young child the child is likely to become confused and confusion leads to insecurity. Even at 7 months the infants wanted to be held by or reached out to both parents. (That is the age when focussed attachments appear.)

Importance of close attachments

A close relationship with one parent actually fosters close relationships with others. Even at an early age children are able to distinguish between different carers.

The emphasis should be on continuity of relationships. Any break in a child's relationship with an adult from the third quarter of the first year is likely to cause upset and should be avoided if the child is not to be harmed.

It is proposed that mediation needs to start at the earliest possible stage so as to help focus on the children's needs and prevent a break in relationships and consequent distress to the children.

The research showed that the pre-separation relationship between the child and the non-resident parent was an important indicator of how well contact would be likely to go.

Mediation—the risks

Mediation has now been available for forty years and is a major part of many jurisdictions' court systems. The focus on mediation and conciliation has its risks. Cases that are not suitable for mediation because of violence or other imbalances of power, must be screened out, but there is also a risk in mediation that the forward-looking focus, and the desire to reach agreement, minimizes the significance of histories of violence or abuse and potential risk factors in ongoing contact.

In Britain *Liz Trinder et al* analysed conversations that had been recorded between conciliators and the parties in to court-based dispute resolution. She concluded that the way conciliators structure the sessions is often *aimed at keeping a lid on conflict and focusing on settlement at the expense of risk management*. Mediators are not fact finders and do not have an investigatory or adjudicatory role. Concerns about safety are too easily overlooked.

Reform

In Australia there is now a government led and funded approach, which has brought about a major reform in service provision to support families after separation. Litigation is just one of those services with changes to the adversarial nature of the trial in parenting disputes to try to reduce conflict between parents in those few cases that do go to trial. Further Australia has developed a service system to support families in making parenting arrangements after separation without needing to go to court. The community-based services integrated with the family law system in a cohesive framework of services to families.

There has been a significant decline in the number of court applications over the three-year period since the introduction of the Family Relationship Centres, (FRCS) with obvious benefits for the court system. However, it is apparent from analysis of outcomes after three years that FRCs are also meeting the needs of many people who would not have gone on to court at all or who would have given up.

In the United States the move has been to provide more in-court therapeutic services, with the court at the centre of a problem-solving team. A study involving a twelve-year follow-up of families who had been randomly assigned to mediate or litigate their child custody disputes indicated that non-residential parents who mediated were more involved in multiple areas of their children's lives, maintained more contact with their children, and had a greater influence in co-parenting twelve years later than families who litigated custody.

Feed-back from the customers

Research by J. Fortin, L. Scanlan and J. Hunt, published by Sussex Law School 2012, www.sussex.ac.uk reflected on their interviews with 400 young adults in the UK exploring their experiences of their parents' separation in an attempt to identify the main factors that affected what they experienced. They set out what separating parents and family law professionals need to hear, namely how important it is to explain things to children to listen to them and to consult them. They spoke to them about their parents' separation and the main factors that affected the quality of their experience.

“different children will be satisfied with different amounts of contact and that the quality of contact is less important than the quality of the child’s experience.”

They concluded that contact arrangements need to be tailor-made for the individual child and proceed step by step taking account of their personalities and interests. Parents may need time to work it out rather than have a one-size-fits-all solution imposed.

Lisa Parkinson, a mediator and trainer in *Taking a longer view of contact*, Fam Law, March 2013, considered how to make best use of that research. She advises that family law professionals need to know about child development including when and how children form attachments to parents and other key figures in their lives.

The child’s age and stage of development and the strength of their attachment to each parent must be considered in making parenting plans. An infant may be put under unnecessary stress by being moved from their primary carer to an unfamiliar environment to an unfamiliar carer.

The making of proper contact arrangements may be impeded because

- a) A parent feels abandoned
- b) The primary carer may doubt the other’s competence as a parent

“The stress of ending their relationship as partners may cause their relationship as parents to break down as well, with unresolved conflict transferred to issues around the children.”

Experienced mediators need to explore how children can best be directly involved with their process with the aim of improving communication between the children and their parents.

“The experience of prolonged stress can affect the brain development of a young child and can lead to problems in the development of linguistic, cognitive and social-emotional skills.” Brown and Ward *Decision-making within a children’s timeframe*, Childhood Wellbeing Research centre, October 2012.

Relationships with a teenager can be strained for any parent. Separated parents should not give up attempts to establish contact too readily Neale and Wade, *Parent problems! Children’s views on life when parents split up*. [2000] Young Voice 15.

Researchers have found that children who resist contact generally had sound reasons for doing so and that manipulation by a resident parent was rare. J. Hunt, *Parental perspectives on the Family Justice System in England and Wales: a review of research*, Report for the Family Justice Council, December 2009.

1KBW

CHERRY HARDING

T 0207 936 1500 E charding@1kbw.co.uk
1 King’s Bench Walk, London EC4Y 7DB