

Firm FOUNDATIONS

Shared care
in separated families:
building on what works



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Gingerbread

Published June 2011

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Gingerbread

Single parents, equal families

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Gingerbread and One Plus One would like to thank the Nuffield Foundation for funding the publication of this policy report.

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Contents

Executive summary	5
Introduction	12
Chapter 1 Terms, definitions and scope of the report	14
Chapter 2 Shared care in the UK: the legal and policy context	15
Chapter 3 The impact of shared care arrangements on children	17
Chapter 4 Factors that promote shared care	21
Chapter 5 The impact of a legal presumption of shared care	24
Chapter 6 Financial, housing and employment issues affecting shared care arrangements	26
Chapter 7 Conclusions	31

Executive summary

Parental separation affects around three million of the twelve million children in the UK.¹ When parents split up, provided it is safe, children in separated families are more likely to thrive if they have a good quality relationship with both parents. Demonstrated benefits include better educational achievement, fewer behaviour problems, reduced substance misuse and higher self-esteem. After separation most children are cared for mainly by one parent, with significant variation in the level of contact with the child's other parent.

In recent years there has been a small but steady increase in shared care.² Research suggests that in the UK at least nine per cent of parents share care - where a child spends the equivalent of at least three days and three nights per week with each parent.³ There is also growing policy interest across the political spectrum in shared parenting in its widest sense. The coalition government's agreement in 2010 stated: "We will encourage shared parenting from the earliest stages of pregnancy – including the promotion of a system of flexible parental leave."⁴

Gingerbread and One Plus One are fully supportive of shared parenting after separation, although we recognise this is not always easy for parents to achieve or appropriate in all circumstances. By shared parenting, as distinct from shared care, we mean a flexible and co-operative child-centred approach between parents where the child is able to enjoy a good quality relationship with each parent – a "co-parenting" approach based on shared parental responsibility rather than a focus on shared residence.

A major government review, inherited from the previous administration, is underway into the operation of the family courts. The review panel is investigating⁵ the possibility of establishing greater contact rights for the parent who is not the main carer – "non-resident parents" - and grandparents. The review panel published its interim findings in March 2011⁶ and its final report is expected in the autumn. On the issue of contact rights, the interim report steers the review away from introducing legislation that "creates or risks creating the perception that there is an assumed parental right to substantially shared or equal time for both parents". However, the panel has recommended an additional statement in legislation to reinforce the importance of the child continuing to have a meaningful relationship with both parents, alongside the need to protect the child from harm.⁷

Gingerbread and One Plus One believe that any statutory presumption of shared care would undermine the fundamental basis of the Children Act 1989, namely that "the child's welfare is the court's paramount consideration." Under the act, when considering an order for contact, the court is duty bound to focus on the child's welfare including the child's "ascertainable wishes and feelings."⁸ The court therefore cannot start with any prior view of either parent's 'rights'. As Baroness Hale put it, applying the welfare test means that the court "must choose from the available options for the future which will be best for the children, not the future which will be best for the adults."⁹ Deciding what is in the best interests of the child must be determined on a case by case basis. The act operates with a pro-contact stance; this is implicit in one of the key concepts of the act, that of ongoing, shared, parental responsibility.¹⁰ It recognises the value to children of having a relationship with both parents, where it is safe to do so.

A legal presumption of shared care risks shifting the emphasis away from the attributes of quality parenting towards arrangements determined by set amounts of time.

¹ Department for Constitutional Affairs/ Department for Education and Skills/Department for Trade and Industry (2004) Parental separation: children's needs and parents' responsibilities Cm 6273 TSO. Available at: <http://webarchive.nationalarchives.gov.uk/20040722013944/http://dfes.gov.uk/childrensneeds/docs/DfesChildrensNeeds.pdf>

² Trinder, L. (2010) Shared residence: A review of recent research evidence. Child and Family Quarterly, vol 22, no 4, pp 475-498

³ Peacey, V. & Hunt, J. (2009) I'm not saying it was easy: contact problems in separated families. London: Gingerbread. <http://www.gingerbread.org.uk/uploads/media/17/6850.pdf>

⁴ The coalition agreement can be viewed in full here: http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf

⁵ For a comprehensive list of issues contained in the scope of the review see: <http://www.justice.gov.uk/reviews/family-justice-intro.htm>

⁶ The interim report can be downloaded from: <http://www.justice.gov.uk/publications/docs/family-justice-review-interim-rep.pdf>

⁷ Family Justice Review Panel (2011). Family justice review interim report. Ministry of Justice, the Department for Education and the Welsh Assembly Government

⁸ Children Act 1989, s 1(3)(4)

⁹ Holmes-Moorhouse v Richmond on Thames London borough council [2009] UKHL 7, [2009] 1 FLR 904

¹⁰ Hunt, J. & Roberts, C. (2004) Child contact with non-resident parents. Family Policy Briefing, 3. Department of Social Policy and Social Work, University of Oxford

¹¹ Ibid

Fundamentally, a focus on time when agreeing parenting arrangements is unhelpful given the evidence that it is the nature and quality of parenting that is crucial not contact time itself.¹¹

The impact of shared care on children

Broadly speaking, there are two types of shared care families: parents who voluntarily choose to pursue shared care arrangements post-separation and those who arrive at shared care through litigation.

¹² Trinder, L. (2010) Shared residence: a review of recent research evidence. *Child and Family Quarterly*, vol 22, no 4, pp 475-498

Parents who voluntarily enter into shared care arrangements have a distinct set of characteristics. Typically both parents will be older and have been married; they will have higher incomes and live in close proximity to one another. Their children tend to be of primary school age. Their parenting relationship is co-operative, flexible and focused on their child's needs.¹²

¹³ Ibid

The second group operates differently in a number of key ways. Parents in this group are more likely to have been involved in repeat litigation and have experienced higher levels of conflict. There are also higher levels of mothers feeling threatened and a lower level of parental co-operation. Their shared care arrangements tend towards rigidity and are put into practice with minimal flexibility.¹³

¹⁴ McIntosh, J. et al. (2010) Post-separation parenting arrangements and developmental outcomes for infants and children. Collected reports. Three reports prepared for the Australian Government Attorney-General's department. Attorney General's department

It is especially hard creating the conditions to make shared care work if it is imposed on two parents who are highly conflicted. Evidence from Australia shows that outcomes for children in shared care arrangements are poor, where there are sustained levels of inter-parental conflict and where one parent has concerns about the child's safety.¹⁴

Factors that promote shared care

¹⁵ Smyth B. (Ed.). (2004) Parent-child contact and post-separation parenting arrangements (Research report no 9), Melbourne: Australian Institute of Family Studies

It is not surprising that highly conflicted parents find it difficult to make shared care work. Researchers¹⁵ have identified a number of factors that help make shared care viable, which include: voluntarily entering into the arrangement as opposed to having legally enforceable orders; geographical proximity; the ability of the parents to get along sufficiently well; a business-like working relationship between the parents; financial comfort; family-friendly work practices for both parents; and shared confidence that the father is a competent parent.

Policy-makers also need to note the importance of measures to encourage greater involvement of both parents from early in a child's life. Post-separation parenting arrangements cannot be considered in isolation to the patterns of parenting established by couples prior to separation. Trends in family policy targeting parental behaviour at separation have paid little attention to pre-separation parenting arrangements and the impact this may have on parents' respective approaches to post-separation arrangements.¹⁶

¹⁶ Harris-Short, S. (2010) Resisting the march towards 50/50 shared residence. Rights, welfare and equality in post-separation families. *Journal of Social Welfare and Family Law*, 32: pp 257-274

In opposition, David Cameron pledged to make the UK the most family-friendly country in Europe. Family-friendly employment practices are particularly important in promoting a culture of parents sharing care within the intact family. Flexible working policies such as paid parental leave, improving rights to request flexible working, access to affordable and quality childcare and establishing a system of paid parental leave are crucial to supporting shared care. This will ease the pressure on parents, whether together or separated, enabling mothers and fathers to juggle paid employment and caring responsibilities more equitably.

The impact of a legal presumption of shared care

Shared care works when it is child-centred, flexible and co-operative. Evidence suggests that these characteristics are more likely to be present in shared care arrangements entered into voluntarily by parents, rather than those where the pathway to shared care is via litigation.

If a legal presumption of shared care were introduced it would impact most directly on the small minority of parents who end up in court: those with the most conflicted relationships and those in the most difficult circumstances where there may be child welfare concerns, such as violence, abuse and addiction. Investment in a range of services that all separating parents and their children can access readily would yield better results than creating a statutory straitjacket that propels parents down a pre-determined route.

Financial difficulties and barriers to employment

Across the UK three million children live in poverty, and about half of the children in single parent families experience poverty compared with almost a quarter of children in couple families.

Many of the financial difficulties affecting single parents are likely to affect both parents in any shared care arrangement. Running two households is more expensive than one, particularly where both households have to provide a home for children. Adjusting to take account of costs that a couple shares, the government estimates that a single parent household needs 74 per cent of the income of a couple household in order to reach a similar standard of living.¹⁷

There are significant practical barriers to establishing shared care arrangements, particularly for families on low incomes or benefits. Sufficient income, suitable housing, flexible employment and affordable childcare are vital in order to make shared care practicable.

For low income families, child benefit is an important part of family finances both as a significant source of regular weekly income in its own right, and because child benefit determines entitlement to some other benefits such as income support for single parents.

The entitlement to child-related benefits is based on the assumption of a “main carer” in both couple and separated families. It is paid to the parent with the main responsibility for the child and in shared care arrangements where parents can’t agree, HMRC decides “main responsibility” based on several criteria.

Whether someone is designated the main carer of children also affects the allocation criteria for social housing (priority need) as well as housing benefit entitlement (number of bedrooms) and council tax benefit calculations. Government proposals to introduce major changes to the benefits system through a universal credit are predicated on an assumption that child benefit will not be shared.

Sharing benefits might appear to be a fairer solution where parents are sharing care, but in practice is likely to mean that both households will face financial hardship, and that neither will have adequate funds to cover the costs of looking after children. In most cases it would lead to

¹⁷ DWP (2009) Households below average income – an analysis of the income distribution 1994-95 – 2007/08. The UK government uses the equivalence scale known as the modified OECD scale to measure official poverty figures. This measure is widely accepted but it may still underestimate the financial needs of single parents relative to couple parents

a transfer of income from the poorer to the better off parent, and from the mother (generally on a lower income) to the father, with a negative poverty and gender impact. Benefit sharing would also add significant complexity to a system that the government is currently attempting to simplify.

For the above reasons Gingerbread and One Plus One do not think that sharing benefits is the right solution. We recognise that a benefit model based on the assumption of a main carer could, in some shared care cases, create unjust anomalies whereby the parent entitled to the child-related benefits is on a higher income than the other parent in the shared care arrangement. This could result in significant financial hardship for the shared care parent not recognised by the benefits system as having substantial caring responsibilities. There needs to be an appeals mechanism in the system to resolve such anomalies when they arise in shared care arrangements. If the considerable financial barriers to low income families trying to establish shared care are to be overcome, the government will need to address the financial implications of supporting a second household at a level that provides for children's needs.

Parents sharing the care of their children also face similar barriers to single parents seeking employment. These include increased availability of part-time or flexible working opportunities, and access to affordable and good quality childcare.

Conclusions

Children in separated families benefit from a good quality relationship with both parents. To create an environment for these relationships to flourish, parents need to be co-operative, flexible and above all else focus on the needs of their children. A legal presumption of shared care is a redundant tool for the promotion of shared care post separation. Firstly, it is unnecessary for the majority of parents who come to their arrangements voluntarily. Secondly, a presumption in and of itself will not guarantee the quality of relationships between parents, and between parent and child, that are fundamental to successful shared care arrangements.

Successive governments in the UK have taken a keen political interest in shared parenting and the greater involvement of both parents in their child's upbringing from birth onwards. Any move towards facilitating child-centred, flexible and co-operative parenting should be welcomed – with the arrangements most likely to succeed where the emphasis is on quality of relationships, rather than specific allocation of residency time.

Looking at the current and proposed tax credit and benefit system, shared care is not currently financially practicable for families on low or modest incomes. Shared care becomes more feasible when parents have a financial cushion to meet the greater costs of running two households. For low income families shared care simply is not an affordable option even when other key factors are present. This is a significant problem that needs addressing. This is a very difficult and frankly unsatisfactory situation where children can lose out on a relationship which matters, if the financial arrangements aren't in place to sustain shared care in the long term.

Parents sharing the care of their children face similar barriers to single parents seeking employment. Employer flexibility can make an enormous difference to parents who share care. The business case is well established in terms of the positive effect on retention and productivity, as well as saving on recruitment, induction and training costs. Family-friendly policies include availability of part-time or flexible working opportunities, a set number of paid

¹⁸ Reed, H. & Horton, T. (2011) Analysis of the impact of tax credit changes on working single parents. Landman Economics

“dependent leave days” a year, and access to affordable and good quality childcare. Paying for childcare is only set to get harder. Research¹⁸ shows that single parents with two children, working full-time and paying for childcare could lose on average up to £2,000 a year as a result of government cuts to the childcare element of tax credits from a maximum of 80 per cent to 70 per cent of costs from April 2011.

Recommendations

In recent years there has been growing interest in shared parenting, with the coalition government committed to encouraging it. If the government wishes to support shared care arrangements following separation it will need to take steps to make this a viable choice for more parents who separate. Gingerbread and One Plus One believe that policy development in this area should take account of the following:

- Post-separation parenting arrangements, including shared care, should be dealt with on a case by case basis, and be predicated on the child’s best interests and welfare first and foremost
- Government needs to tackle a much broader range of barriers to shared care arrangements, and recognise the importance of supporting shared parenting from the early years of a child’s life – well before separation – through flexible working policies such as paid parental leave, decent and well-paid part-time jobs, and access to affordable and quality childcare
- Government needs to act to help parents on low incomes or benefits to share care. Poverty scars children’s lives, so addressing the higher risks of poverty post-separation is key to delivering solutions based on the best interests of the child as well as being an important factor in making shared care viable to families in all income groups.

The impact of shared care on children

The best interests of the child must remain front and centre when it comes to arrangements regarding where they will live post separation. Critically, parents and professionals must take time to listen to children’s views and to incorporate their needs, feelings and wishes into the decision-making process. To strengthen the voice of the child and reaffirm their best interests, we make the following recommendations:

- Commission large-scale, long-term research which explores children’s views of their care arrangements, understanding from their perspective what works best for them
- Map how different pathways into and through shared care impact upon child outcomes
- Reject the introduction of a legal presumption that creates or risks creating the perception that there is an assumed parental right to substantially shared or equal time for both parents, as recommended by the Family Justice Review interim report. This recommendation recognises the importance of assessing each case based on the best interests of the child and we urge the government to accept this.

Financial difficulties and barriers to employment

A significant number of parents who have voluntarily agreed to a shared care arrangement will be able to come to their own agreement on how best to support their children financially. However, for families on low incomes, the current tax credit and benefit system is not well designed to address the needs of parents with shared care arrangements, nor easily adjustable to meet these circumstances, and plans for future welfare reform will not change this.

¹⁹ The government proposals are available at: <http://www.dwp.gov.uk/docs/strengthening-families.pdf>
Gingerbread's response to the government consultation *Strengthening families, promoting parental responsibility* is available at: <http://www.gingerbread.org.uk/content/592/Policy-work>

More support is needed to help parents agree on the most suitable type of care arrangement for their children and circumstances after separation. We welcome the government's commitment to create an integrated model of relationship and family support services for families who are separating, as set out in *Strengthening families, promoting parental responsibility*.¹⁹

To help tackle the financial barriers for parents who wish to share care, Gingerbread and One Plus One make the following recommendations:

- Significant investment is needed in a range of services, including advice and mediation, to support those parents who are able to reach agreement on post-separation arrangements to do so
- The tax credit and benefit system does not enable parents in a shared care arrangement to split child-related benefits. While splitting benefits would appear a fair solution where care is shared, in practice it is likely to mean that both households would be at risk of poverty. In most cases this would also lead to a transfer of income from the poorer to the better off parent. Given the profound impact that poverty has on children's lives it would not be in the best interests of the child to split benefits
- There is a need in the current tax credit and benefit system, and in its proposed replacement, universal credit, to put in place mechanisms to address anomalies in cases where benefits are being paid to the parent on a higher income
- The current formula for calculating child maintenance takes account of how many nights children spend with the parent deemed the "non-resident parent". While in shared care arrangements both parents are contributing time and material support, Gingerbread and One Plus One support the continuation of child maintenance payments on the basis that payments play an important role in reducing the risk of child poverty and enable the child to benefit from the lifestyle of both parents
- Both parents in a shared care arrangement need housing provision suitable for their children. The government should halt proposed changes to the age limit for the shared room rate due to come into force January 2012, which means any single person under the age of 35 will only be allowed to claim a lower rate of housing benefit intended for a room in shared accommodation. These measures would impact adversely on the parent in a shared care arrangement not deemed the main carer
- Where parents are in a shared care arrangement both should be entitled to take advantage of the flexibilities available to single parents on jobseeker's allowance, such as the ability to fit working hours around school hours if their child is under the age of 13

- Government regulations should be amended to extend right to request flexible working legislation to all parents at the point of job offer and establish a system of paid parental leave. The introduction of a set number of paid dependency days a year to cover, for example, the care of children who are ill, child health appointments and school sports days would be a significant step towards making Britain more family friendly and supporting shared care
- Government should ensure that childcare rates within universal credit cover at least 80 per cent of childcare costs with an aspiration to cover 100 per cent as the economy improves.

Introduction

²⁰ Trinder, L. (2010) Shared residence: a review of recent research evidence. *Child and Family Quarterly*, vol 22, no 4, pp 475-498

²¹ Peacey, V. & Hunt, J. (2009) I'm not saying it was easy: contact problems in separated families. London: Gingerbread. <http://www.gingerbread.org.uk/uploads/media/17/6850.pdf>

²² See section on terms and definitions

²³ The coalition's programme for government can be viewed in full here: http://www.cabinetoffice.gov.uk/sites/default/files/resources/coalition_programme_for_government.pdf

²⁴ The Liberal Democrat 2010 election manifesto can be viewed in full here: http://network.libdems.org.uk/manifesto2010/libdem_manifesto_2010.pdf

²⁵ The full terms of reference is available at: <http://www.justice.gov.uk/about/moj/independent-reviews/family-justice-review/terms-of-reference.htm>

²⁶ The interim report can be downloaded from: <http://www.justice.gov.uk/publications/docs/family-justice-review-interim-rep.pdf>

²⁷ Family Justice Review Panel (2011). Family justice review interim report. Ministry of Justice, the Department for Education and the Welsh Assembly Government

When parents split up, provided it is safe, children in separated families are more likely to thrive if they have a good quality relationship with both parents. After separation most children are cared for mainly by one parent, with significant variation in the level of contact with the child's other parent. In recent years there has been a small but steady increase in both parents spending significant amounts of time caring for their children post separation.²⁰ Social factors that explain this trend include the growth of women's paid employment and greater involvement by fathers in their children's upbringing within couple families. In addition, legislative change in a number of countries has also prompted a rise of court-ordered shared care arrangements for separated parents.

In January 2009 Gingerbread published the only contemporary UK study to date that estimates the numbers of parents with shared care arrangements.²¹ Using a nationally representative survey, the findings suggest that at least nine per cent of parents share care (spending at least the equivalent of three days and nights per week with each parent).

In the UK there is growing policy interest in "shared parenting"²² across the political spectrum. The coalition government's programme for government in 2010 stated: "We will encourage shared parenting from the earliest stages of pregnancy – including the promotion of a system of flexible parental leave".²³ The Liberal Democrat manifesto had pledged to "introduce a default contact agreement which would divide the child's time between their two parents in the event of family breakdown, if there is no threat to the safety of the child."²⁴

The Family Justice Review was launched in January 2010 to examine the effectiveness of the family justice system and the outcomes it delivers, and to make recommendations for reform. The remit of the review²⁵ was extended by the coalition government to include:

- How to increase the use of mediation when couples separate as a preferred alternative to court processes
- How to promote further contact rights for non-resident parents and grandparents.

The review panel published its interim findings in March 2011²⁶ and its final report is expected in the autumn. On the issue of shared care, the interim report steers the review away from introducing legislation that "creates or risk creating the perception that there is an assumed parental right to substantially shared or equal time for both parents". The panel has recommended an additional statement in legislation to reinforce the importance of the child continuing to have a meaningful relationship with both parents, alongside the need to protect the child from harm.²⁷ The direction of travel outlined by the interim report provides an opportunity to refocus attention on a number of key areas. Firstly, making shared parenting a reality from early in a child's life before the issue of parental separation arises. Secondly, if parents separate there are pressing practical barriers to overcome for those who choose to share care. These include adequate financial support, housing and flexible employment for both parents. It is these issues that influence the feasibility of shared care post-separation but have been overshadowed by the recent debates on a legal presumption of shared care.

This report sets out Gingerbread's and One Plus One's understanding of shared care in post-separation families. It examines the impact on children of shared care arrangements, factors that enable it to work successfully and the policy levers that could help encourage shared care. Views differ considerably on how to promote shared care post-separation and its benefits for children in certain circumstances. While there is broad support for consensual shared care, there are significant concerns about the impact on children of requiring parents in conflict to share care following litigation. This report examines the Australian experience of establishing a legal presumption of equal parental responsibility and the outcomes for children in litigated cases. It also looks at the financial implications of shared care and the challenges for the welfare benefits system in enabling this as a feasible option for families on low incomes or benefits.

Whilst the focus of this report is on shared care, we recognise that there are a variety of ways in which parents can organise contact and residence post separation. We don't favour one type of arrangement over another; rather we believe parents should make decisions based on the best interests of their children and according to their specific circumstances.

Chapter 1

Terms, definitions and scope of the report

There is a plethora of terminology to describe the various types of post-separation parenting arrangements. Often terms mean different things to different people and are subject to vigorous debate. Below, we outline how the terms shared parenting, parental responsibility, shared residency and shared care are used in this report.

■ Shared parenting

A flexible and co-operative child-centred approach between parents where the child is able to enjoy a good quality relationship with each parent - a “co-parenting” approach based on shared parental responsibility (see below) rather than a focus on shared residence. A co-parenting approach, characterised by flexibility and focused on the child’s needs, can be at the heart of any type of parenting arrangement. This can be in couple or separated families; main-carer or shared care models.

■ Parental responsibility

Enshrined in the 1989 Children Act, parental responsibility is intended to underline that, even where a child lives with one parent, both parents are still responsible for major decisions about a child’s life. All married parents, and increasing numbers of unmarried fathers whose name appears on the birth certificate, share parental responsibility for their children.

■ Shared residency / shared care

Describes when a child spends time living with both parents (including overnight stays). This can either be agreed voluntarily by parents or mandated by a court in the UK. The term **shared care** is more commonly used to refer to shared residency internationally and it is this term, rather than shared residency, that is used throughout the briefing paper. In line with previous research undertaken by Gingerbread, shared care is understood to mean when a child spends the equivalent of least three days and three nights per week with each parent.

Out of the three terms outlined above shared parenting is the most contested. The government uses it to describe a raft of policy measures that will support parents to share the burden of caring for a child more equitably from the point of birth onwards. For others, shared parenting is interpreted as an arrangement post-separation that guarantees both parents spend equal or substantial amounts of time with their child. Here, the allocation of a set amount of contact or residency time is the primary concern – the focus is on where a child lives and whether a child’s time is divided equally between parents.

Chapter 2

Shared care in the UK: the legal and policy context

²⁸ Department for Constitutional Affairs/ Department for Education and Skills/Department for Trade and Industry (2004) Parental separation: children's needs and parents' responsibilities Cm 6273 TSO

²⁹ Peacey, V. & Hunt, J. (2009) I'm not saying it was easy: contact problems in separated families. London: Gingerbread

³⁰ The government proposals are available at: <http://www.dwp.gov.uk/docs/strengthening-families.pdf> Gingerbread's response to the government consultation Strengthening families, promoting parental responsibility is available at: <http://www.gingerbread.org.uk/content/592/Policy-work>

³¹ Hunt, J. & Macleod, A. (2008) Outcomes of applications to court for contact orders after parental separation or divorce. University of Oxford London: Ministry of Justice, Family Law and Justice Division

³² See Smart, C., May, V., Wade, A., & Furniss, C. (2003) Residence and contact disputes in court. Volume 1. London: Lord Chancellor's department

³³ For a comprehensive list of issues contained in the scope of the review see: <http://www.justice.gov.uk/reviews/family-justice-intro.htm>

³⁴ Children Act 1989, s 1(3)(4)

Parental separation affects around three million of the twelve million children in the UK.²⁸

The great majority of parents have no contact with the courts or solicitors when sorting out arrangements for their children post-separation. This is not an easy matter for many: while 70 per cent of parents do make contact arrangements, a substantial proportion of these parents have encountered problems in making it work. Meanwhile, in around 30 per cent of cases where the courts have not been involved, there is no direct contact between children and the non-resident parent.²⁹ Between 9 and 12 per cent of parents share care.

A significant number of parents who have voluntarily agreed to a shared care arrangement will be able to come to their own agreement on how best to support their children financially. For others, however, coming to agreements concerning where their children will live and what financial support is required can be an uphill struggle. We welcome the government's commitment to create an integrated model of relationship and family support services for parents who are separating.³⁰

The 10 per cent of cases that go through the court system³¹ are those where the conflict between parents is likely to be highest, the issues most complex to resolve and the impact on children's lives greatest. A substantial proportion of these cases involve allegations of violence or abuse, mental health problems, drink or drug addiction, or dangers to the child. In England, it is estimated that between a third and a half of family court contact cases include allegations of violence or abuse.³²

The coalition government is currently carrying out a major review into the workings of the family court, a process it inherited from the previous administration. The review panel is investigating³³ how mediation and other non-court forms of dispute resolution can be better-utilised to reduce the need for parents to go to court and the possibility of establishing greater contact rights for the parent who is not the main carer – “non-resident parents” - and grandparents. Establishing a legal presumption of shared care is one of the options being explored by the review panel.

Interest in a legal presumption of shared care has been partly prompted by experience in Australia which in 2006 introduced legislation that establishes a rebuttable presumption that equal shared parental responsibility is in the child's best interests. This does not apply where there are reasonable grounds to suspect family violence or child abuse. Family courts must consider whether time spent with each parent should be equal or substantial, whether this would be in the best interests of the child and whether this is reasonably practicable. We examine the impact of the Australian experience later in this report.

A number of family sector and children's charities have raised concerns that any statutory presumption would undermine the fundamental basis of the Children Act 1989, namely that “the child's welfare is the court's paramount consideration.” Under the act, when considering an order for contact, the court is duty bound to focus on the child's welfare including the child's

³⁵ Holmes-Moorhouse v Richmond on Thames London borough council [2009] UKHL 7, [2009] 1 FLR 904

³⁶ Hunt, J. & Roberts, C. (2004) Child contact with non-resident parents. Family Policy Briefing, 3. Department of Social Policy and Social Work, University of Oxford

³⁷ For example: Re H (A Minor) (Shared Residence) [1994] 1 FLR 717

³⁸ See: Evans, S (2010) Shared residence: fact or fantasy. Family Law, February, pp200-201 and Gilmore, S. (2010) Shared residence: a summary of the courts' guidance. Family Law, March, pp285-292

³⁹ For example: Re A v A (Minors: Shared Residence Order) [1994] 1 FLR 669

⁴⁰ Re D v D (Shared Residence Order) [2001] 1 FLR 496

⁴¹ Re W (Shared Residence Order) [2009] EWCA Civ 370, [2009] 2 FLR 436

⁴² Gilmore, S. (2010) Shared residence: a summary of the courts' guidance. Family Law, March, pp285-292

⁴³ Mooney, A., Oliver, C., & Smith, M. (2009) Impact of family breakdown on children's wellbeing. Evidence review. University of London. Available at: <http://www.education.gov.uk/publications/eOrderingDownload/DCSF-RR113.pdf>

⁴⁴ Sarkadi, A., Kristiansson, R., Oberklaid, F. & Bremberg, S. (2008). Fathers' involvement and children's developmental outcomes: a systematic review of longitudinal studies. Acta Paediatrica 97(2), 153–158. Flouri, E. (2005). Fathering and Child Outcomes. Chichester: John Wiley & Sons. Pleck, J. & Masciadrelli B. (2004) Parental involvement by U.S. residential fathers. In Lamb, M. (2004) The role of the father in child development. Hoboken: John Wiley & Sons

“ascertainable wishes and feelings.”³⁴ The court therefore cannot start with any prior view of either parent's rights. As Baroness Hale put it, applying the welfare test means that the court “must choose from the available options for the future which will be best for the children, not the future which will be best for the adults.”³⁵ Deciding what is in the best interests of the child must be determined on a case by case basis. The act operates with a pro-contact stance. It is implicit in one of the key concepts of the act, that of ongoing, shared, parental responsibility.³⁶ It recognises the value to children of having a relationship with both parents, where it is safe to do so.

The judicial approach to making shared residence orders has broadened in recent years. At one time, such an order would only be made if it would create a positive benefit for the child.³⁷ Gradually the circumstances where a shared residence order will be considered have widened.^{38 39} The situation does not have to be unusual or exceptional,⁴⁰ and there does not have to be a 50/50 split in the child's time between parents to make such an order.⁴¹ It is now the case that a shared residence order will even be considered where the parents have a poor relationship, for example to underline both parents' importance, or to leave no room for disagreement.⁴²

Chapter 3

The impact of shared care arrangements on children

⁴⁵ Jackson, A. P., Choi, J. K. & Franke, T. M. (2009) Poor single mothers with young children: Mastery, relations with nonresident fathers, and child outcomes. *Social Work Research*, 33, pp95-106

⁴⁶ Chang, J., Halpern, C. & Kaufman, J. (2007) Maternal Depressive Symptoms, Father's Involvement, and the Trajectories of Child Problem Behaviors in a US National Sample. *Pediatric & Adolescence Medicine*, 161(7) pp697-703.
Crockenberg, S. & Leerkes, E. (2003) Parental acceptance, postpartum depression, and maternal sensitivity: Mediating and moderating processes. *Journal of Family Psychology*, 17, pp80-93

⁴⁷ Gee, J. & Rhodes, C. (2003) Adolescent mothers' relationship with their children's biological fathers: social support, social strain, and relationship continuity. *Journal of Family Psychology*, Vol. 17(3), pp 370-383; Krishnakumar, A. & Black, M. (2003) Family processes within three-generation households and adolescent mothers' satisfaction with father involvement. *Journal of Family Psychology*, Vol. 17(4), pp 488-498

⁴⁸ Mooney, A., Oliver, C., & Smith, M. (2009) Impact of family breakdown on children's wellbeing. Evidence review. University of London. Available at: <http://www.education.gov.uk/publications/eOrderingDownload/DCSF-RR113.pdf>

⁴⁹ Trinder, L. (2010) Shared residence: a review of recent research evidence. *Child and Family Quarterly*, vol 22, no 4, pp 475-498

Children's positive adjustment to parental separation is associated with a number of factors. These include competent and warm parenting, parents having good mental health, low parental conflict, co-operative parenting post-separation and social support. Children also benefit from contact with the non-resident parent, usually the father, but not when this relationship is poor or contact is against the child's wishes.⁴³

There is evidence that high father-involvement is associated with better outcomes for children,⁴⁴ whether or not they are co-resident.⁴⁵ Demonstrated benefits include:

- Better educational achievement
- Positive peer/partner relationships
- Fewer behavioural problems
- Reduced criminality
- Reduced substance misuse
- Lower teenage pregnancy rates
- Higher self-esteem.

Involved fathers can also buffer children against negative circumstances, such as poverty or their mother's depression.⁴⁶ Fathers provide mothers with important support, commonly enabling them to parent more positively.⁴⁷

There is however considerable evidence that exposure to persistent and unresolved parental conflict has a negative impact on child outcomes over and above a particular type of care arrangement. Parental conflict is a key variable associated with negative outcomes in children from both intact and non-intact families and research in this area clearly shows that family functioning has a greater impact on child outcomes than family structure.⁴⁸

Our knowledge about shared care specifically is largely based on overseas research; to date no large scale studies have been conducted in the UK. Broadly speaking, there are two types of shared care families: those parents who voluntarily choose to pursue shared care arrangements post separation, and those whose shared care arrangement is ordered via the family courts.

Parents who voluntarily enter into shared care arrangements have a distinct set of characteristics. Typically both parents will be older and have been married; they will have higher incomes and live in close proximity to one another. Their children tend to be of primary school age. Their parenting relationship is co-operative, flexible and focused on their child's needs.⁴⁹

CASE STUDY: JUNE AND PHILIP⁵⁰

June and her ex-partner Philip have shared the care of their daughter Amy for the last five years, a decision they made together soon after their relationship ended. "We were able to put differences aside and think about what was best for our daughter. My ex-partner wanted to remain involved in Amy's life, and I would have struggled to juggle work and look after Amy on my own."

June has their daughter for four days a week and Philip looks after her for the other three days. They both work full-time but with flexible hours and live ten minutes' drive from one another. The arrangement is flexible and Amy, who is now eight, has a say in decisions and can choose what she would like to do, for example, going to a friend's party which would mean swapping the days she spends with mum or dad.

June and Philip are amicable and focused on making shared care work for Amy's benefit. "We split up to create a better environment for our daughter. It helped because we walked away on equal terms and there was no animosity." They both attend school parents' evenings together and Philip pays some money to June who is responsible for buying the things Amy needs on a day to day basis.

CASE STUDY: DAVID AND SUSAN

David shares the care of his two school-aged children with his ex-partner. This is based on a fortnightly cycle, with the time the children spend with each parent split equally. This was agreed via mediation and turned into a court order. As well as working with David and his ex-partner Susan, the mediator also spent time listening to their children's needs and wishes. Both the children wanted to live with mum and dad. "This was the moment the penny dropped," says David. "It helped to convince Susan that shared care could work for us." Susan, who is in receipt of child benefit and child tax credits, was also worried that a shared care arrangement may result in the loss of this income. "We agreed that Susan would still claim the child benefit so that she wouldn't lose her tax credits." They share costs equally, for example, David buys the school shoes and Susan buys the PE kit.

David and Susan both work part-time and live less than two miles apart. This helps them to be flexible and adapt their routine as and when required. They attend parents' evenings together and make every effort to exchange information from school with each other. "I feel I have an equal footing as a parent and the children are doing really well." David also feels that his relationship with Susan has improved over time. "We focus on the children and don't bring up the past; this helps us not to argue."

⁵¹ Trinder, L. (2010) Shared residence: a review of recent research evidence. *Child and Family Quarterly*, vol 22, no 4, pp 475-498

The second group operates differently in a number of key ways. Parents in this group are more likely to have been involved in repeat litigation and have experienced higher levels of conflict. There are also higher levels of mothers feeling threatened and a lower level of parental co-operation. Their shared care arrangements tend towards rigidity and are put into practice with minimal flexibility.⁵¹

CASE STUDY: ANNABEL AND BEN

Annabel has been in a court-ordered shared care arrangement with her ex-partner Ben for the past 18 months. Their two primary school-age children spend alternate weeks with each parent. They live eight miles apart in different towns. Annabel and Ben communicate via email so there is a record of what has been decided. Where the children spend their holidays also has to be decided by a court order. There have been times when Ben hasn't adhered to court orders and withheld the children's passports.

Annabel finds the arrangement incredibly difficult and feels it is having a detrimental impact on the children. "There was domestic violence when we were married and I remain fearful. I worry constantly when my sons are living with their dad because he refuses to let them speak to me and doesn't administer the medication that one of my sons needs to take on a daily basis. The school has told me that the children don't do their homework when they are living at Ben's house and find it hard to settle at school on change over days."

"My boys are brave soldiers and they don't make a fuss. I don't believe this arrangement is in the best interests of my children. I want their dad to be involved in their lives but I think they need one stable place they can call home. I was their main carer before our marriage ended. Now, the children's lives are constantly disrupted, they don't see their friends regularly and it is hard to integrate them into the village community when they move between homes every week. Ben is very negative about me towards the children, which is harmful and upsetting for them. Both children suffer from nightmares and one has tummy pains, which have been diagnosed as a stress-related problem. The doctor has said the tummy pains are unlikely to go away until the living arrangements are changed. I sincerely hope that this sort of arrangement will not be forced upon children and parents in the future."

⁵² McIntosh, J. et al. (2010) Post-separation parenting arrangements and developmental outcomes for infants and children. Collected reports. Three reports prepared for the Australian government Attorney-General's department. Attorney-General's department. Available at: <http://tinyurl.com/37u759m>

It is especially hard creating the conditions to make shared care work if it is imposed on two parents who are highly conflicted.

A study into the impact of overnight stays and shared care on young children in both co-operative and conflicted families found that shared care is developmentally challenging for infants and pre-school children.⁵² Researchers examined the overnight care patterns and psycho-emotional development in infants and young children. For younger children (under the age of four) the study identified a normative risk. Where these children had two or more overnight stays per week away from their main home the authors noted "a cluster of developmental problems indicative of significant stress" in the under twos, and in older infants

⁵³ Kaspiw, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L & the Family law evaluation team (2009). Evaluation of the 2006 family law reforms. Melbourne: Australian Institute of Family Studies. Available at: <http://www.aifs.gov.au/familylawevaluation/>

⁵⁴ Trinder, L. (2010) Shared residence: a review of recent research evidence. *Child and Family Quarterly*, vol 22, no 4, pp 475-498

⁵⁵ Smyth, B. (2009) A five-year retrospective of post-separation shared care research in Australia. *Journal of Family Studies*, vol 15, no 1, pp 36-59. See also: Kaspiw, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L & the Family Law Evaluation Team (2009). Evaluation of the 2006 family law reforms. Melbourne: Australian Institute of Family Studies. Available at: <http://www.aifs.gov.au/familylawevaluation/> and Cashmore, J. et al. (2010) Shared care parenting arrangements since the 2006 family law reforms: Report to the Australian government Attorney-General's department. Sydney: Social Policy Research Centre, University of South Wales

⁵⁶ Trinder, L. (2010) Shared residence: a review of recent research evidence. *Child and Family Quarterly*, vol 22, no 4, pp 475-498

⁵⁷ Ibid

aged two and three the study found higher rates of problem behaviours such as biting and kicking, refusing to eat, and poor persistence in activities compared with primary care and rare/no overnights. This risk is increased for children in situations where parents are highly conflicted or where one parent holds concerns about the child's safety.

In summary, the research findings also show that:

- Arrangements were less durable. The Australian Institute of Family Studies evaluation⁵³ found that only 49 per cent of shared care arrangements were still in place after 4-5 years, compared to 87 per cent of primary parent care arrangements
- Children in shared care (whether rigid or flexible) are least satisfied with their care patterns compared with children in other types of arrangement; and most often wish for a change in their arrangements. 44 per cent of children in shared care want to change compared to 27 per cent of children in a primary parent care arrangement
- Fathers report higher levels of satisfaction with shared care whether parental relationships are co-operative or conflicted. Mothers only prefer shared care when it is co-operative and flexible, expressing dissatisfaction with rigid arrangements and where there are conflict and safety issues.⁵⁴

Parents spending time with their children is a way of demonstrating their desire to be involved in their lives. It might seem reasonable to assume that the amount of time a parent spends with their child has a direct result on the quality of their relationship. However, there is a lack of empirical evidence to substantiate the idea that a clear linear relationship exists between parenting time and children's outcomes.⁵⁵ In fact children do no better or worse where they have more or less frequent contact. It is not the amount of time that is critical but what parents do with that time, their parenting skills and emotional availability.⁵⁶ A legal presumption risks shifting the emphasis away from the attributes of quality parenting towards arrangements determined by set amounts of time. Fundamentally, a focus on time when agreeing parenting arrangements is unhelpful given the evidence that it is the nature and quality of parenting that is crucial not contact time itself.⁵⁷

Chapter 4

Factors that promote shared care

⁵⁸ Smyth, B. (2004) Parent-child contact and post-separation parenting arrangements (Research report No 9). Melbourne: Australian Institute of Family Studies

It is not surprising that it is difficult to make shared care work where the parents are highly conflicted. Previous Australian research⁵⁸ identified a number of factors that help make shared care viable, which include: entering voluntarily into the arrangement as opposed to having legally enforceable orders; geographical proximity; the ability of the parents to get along sufficiently well; a business-like working relationship between the parents; financial comfort; family-friendly work practices for both parents; and shared confidence that the father is a competent parent.

⁵⁹ McIntosh, J. & Chisholm, R. (2008) Cautionary notes on the shared care of children in conflicted parental separations. *Journal of Family Studies*, 14 (1), pp 37-52

In addition researchers suggest a number of psychological filters⁵⁹ can contribute to positive experiences of shared care, including:

- Emotional maturity of the parent (seen in each parent's capacity to operate in their child's best interests, rather than a fixation on achieving parity of time)
- Parents' emotional availability to the child as experienced by the child
- Managed parental conflict and contained acrimony
- A shared perception that the child is safe with the other parent
- The child's own happiness with a shared arrangement.

⁶⁰ Smart, C. (2004) Equal shares: rights for fathers or recognition for children? *Critical Social Policy*, vol. 24 no. 4, pp 484-503

In a study of 30 British children, three key factors emerged⁶⁰ that characterise successful shared care: the wishes and needs of children are prioritised, arrangements are flexible and adapt to children's changing needs, and children feel equally at home with both parents. All these factors relate to the quality of relationships rather than the quantity of time spent with each parent.

All these factors reinforce the case for early non legal interventions – information, mediation, counselling – to head off or address the conflict between parents before it becomes entrenched and to support parents in a child-centred approach that focuses on co-parenting to meet their children's needs. The anticipated shift towards a greater degree of availability of alternative dispute resolution options such as mediation is therefore to be welcomed – as long as recourse to the courts is still there for those who need it.

The above factors also highlight the importance of financial and housing issues. Parents who have voluntarily entered into shared care tend to have higher incomes and live in close proximity to one another. These issues are addressed in section six.

⁶¹ Harris-Short, S. (2010) Resisting the march towards 50/50 shared residence. Rights, welfare and equality in post-separation families. *Journal of Social Welfare and Family Law*, 32: pp 257-274

Policy-makers also need to note the importance of measures to encourage greater involvement of both parents from early in a child's life. Post-separation parenting arrangements cannot be considered in isolation to the patterns of parenting established by couples prior to separation. Trends in family policy targeting parental behaviour at separation have paid little attention to pre-separation parenting arrangements and the impact this may have on parents' respective approaches to post-separation arrangements.⁶¹ Family-friendly employment practices are

particularly important in promoting a culture of parents sharing care within the intact family. Flexible working policies such as paid parental leave, improving the right to request flexible working, access to affordable and quality childcare and establishing a system of paid parental leave are crucial to supporting shared care. This will ease the pressure on parents whether together or separated, enabling mothers and fathers to juggle paid employment and their caring responsibilities more equitably. This will have a much greater and sustained influence over wider social norms and parenting choices.

⁶² Smeaton, D. & Marsh, A. (2006) Maternity and paternity rights and benefits: survey of parents 2005. Employment relations research survey series. No. 50. London: Department of Trade and Industry

⁶³ Ellison, G., Barker, A., and Kulasuriya, T. (2009). Work and care: a study of modern parents. London: Equality and Human Rights Commission

⁶⁴ Lewis, J. and Campbell, M. (2007). Work/Family balance policies in the UK since 1997: a new departure. *Journal of Social Policy*, 36(3): 365-381

⁶⁵ Harris-Short, S. (2010) Resisting the march towards 50/50 shared residence. Rights, welfare and equality in post-separation families. *Journal of Social Welfare and Family Law*, 32: pp 257-274

⁶⁶ The government consultation document is available at: <http://www.bis.gov.uk/Consultations/modern-workplaces>

⁶⁷ Oláh, Bernhardt and Goldscheider 2002; Ellingsaeter and Leira 2007, cited in Harris-Short, S. (2010) Resisting the march towards 50/50 shared residence. Rights, welfare and equality in post-separation families. *Journal of Social Welfare and Family Law*, 32: pp 257-274

⁶⁸ Harris-Short, S. (2010) Resisting the march towards 50/50 shared residence. Rights, welfare and equality in post-separation families. *Journal of Social Welfare and Family Law*, 32: pp 257-274

Current entitlements for working parents include 13 weeks of unpaid parental leave that must be taken before a child turns five. However, in 2005 only eight per cent of men took any parental leave⁶² and the low take-up reflects the fact it is unpaid and inflexible to use. More successful has been the right to request a flexible working pattern. This is available to both parents but the take-up has been much higher amongst mothers who want to reduce their working hours. Only 27 per cent of men consider flexible working to be an important factor when changing employment, in comparison to 55 per cent of women.⁶³ These entitlements appear to be targeted at mothers needing to work rather than at fathers needing to care.⁶⁴

Fathers are entitled to two weeks' paternity leave on the birth of a child (paid at the statutory rate). New provisions that came into force in April 2011 allow fathers to take additional paternity leave (APL) up to a maximum of 26 weeks. APL must be taken during the first year of a child's life and can begin any time from 20 weeks after the birth. It can only be taken when the mother returns to work or is treated as returning to work. APL is paid at the same rate as statutory maternity pay up to a maximum of 19 weeks. This is a significant step, but fathers' leave will have to be taken at the expense of the mother's own entitlement and the lack of financial support will act as strong disincentive to take-up.⁶⁵

The political rhetoric of successive governments certainly matches the aspirations of parents to secure a more egalitarian approach to fulfilling their parental responsibilities, but in practice these policies have done little to make shared care a sustainable reality for the vast majority of working families. The UK has some of the most cautious policies on work-family balance in Europe and as a result traditional and gendered patterns of parenting within couple families remain the social norm in the UK. The coalition government launched a consultation in May 2011 outlining proposals to make employment practices in the UK more flexible and family-friendly, including proposals to introduce flexible parental leave and extend flexible working provisions.⁶⁶ If shared care is to be a realistic and practicable option for parents at the point of separation, considerably more needs to be done to support the principle of shared care in intact families.

PROMOTING SHARED CARE: THE SWEDISH MODEL

Since the mid 1960s, the focus of Sweden's family policy has been on achieving a more egalitarian partnership between mothers and fathers. At the heart of this dual earner/dual carer model is the recognition that to achieve mothers' active participation in the labour market, fathers must assume equal responsibility for the provision of childcare at home.⁶⁷ The Swedish government has taken a proactive and interventionist stance towards fathering, facilitating an effective partnership between parents and crucially between parents and the state.⁶⁸ Provisions include: high quality, publicly funded childcare, paid parental leave with specific time

⁶⁹ Bjornberg, U. (2002). Working and caring for children: family policies and balancing work and family in Sweden. In: Carling, A., Duncan, S., and Edwards, R. (eds.), *Analysing Families – Morality and rationality in policy and practice*, Routledge, 93

⁷⁰ Boje, T.P. (2007). Working time and caring strategies: parenthood in different welfare states. In: A.L. Ellingsaeter and A. Leira (eds.), *Politicising Parenthood in Scandinavia – Gender Relations in Welfare States*. Bristol: Policy Press, 195

allocations for mothers and fathers and flexibility as to whether leave is taken on a full-time or part-time basis.

The upbringing of children is not viewed as solely a private responsibility but that of parents, employers and broader society.⁶⁹ Over 40 years, Sweden has managed to gradually change parenting patterns to reflect greater gender equality. 62 per cent of Swedish men report restricting their employment obligations to meet their caring responsibilities, and 52 per cent of Swedish mothers work over 40 hours per week compared with 13 per cent of UK mothers.⁷⁰

Chapter 5

The impact of a legal presumption of shared care

Shared care works when it is child-centred, flexible and co-operative. Evidence suggests that these characteristics are more likely to be present in shared care arrangements entered into voluntarily by parents, rather than those whose shared care arrangement is decided via litigation.

⁷¹ Family Justice Review Panel (2011) Family justice review interim report. Ministry of Justice, the Department of Education and the Welsh Assembly Government

The Family Justice Review interim report reiterates strong support for the current legal position where the welfare of the child comes before the rights of parents.⁷¹ As a result, the interim report steers the review away from introducing legislation that “creates or risks creating the perception that there is an assumed parental right to substantially shared or equal time for both parents”.⁷²

⁷² Ibid

We welcome this recommendation in the interim report. The result of legislative reform in Australia in 2006 has been a sharp increase in shared care among families least able to make it work in the best interests of their children. The interim report highlights research from Australia and Sweden detailing the significant damage done to children when legislation creates expectations about a substantial sharing of time between separated parents.⁷³ Below, we outline some of the key findings from the Australian research on the impact of the 2006 reforms.

⁷³ Ibid

Evidence shows a significant increase in shared care arrangements in the litigated population, rising from four to 34 per cent between 2006 and 2009. This is in contrast to the general population where the numbers of parents voluntarily entering into shared care arrangements have remained fairly constant over the same period. It would seem that the majority of parents coming to their own agreements regarding contact in the “shadow of the law” are largely unaffected by the reforms. By contrast, legislative change has had a significant impact on a minority of families (approximately ten per cent) that access the family justice system. These arrangements are less durable and child well-being is compromised because they remain exposed to parental conflict and subject to rigid arrangements that fail to take account of their needs.

⁷⁴ See: Kaspiew, R., Gray, M., Weston, R., Moloney, L., Hand, K., Qu, L & the Family Law Evaluation Team (2009). Evaluation of the 2006 family law reforms. Melbourne: Australian Institute of Family Studies. Available at: <http://www.aifs.gov.au/familylawevaluation/> and McIntosh, J. et al. (2010) Post-separation parenting arrangements and developmental outcomes for infants and children. Collected Reports. Three reports prepared for the Australian government Attorney-General's department. Attorney-General's department. Available at: <http://tinyurl.com/37u759m>

Research⁷⁴ into the impact of the Australian reforms sounds alarm bells. Findings highlight that:

- The focus on parents' rights rather than a child's needs can lead to more conflict and litigation, not less. The changes have been widely misunderstood by many parents and some professionals as establishing an “entitlement” to equal contact time for each parent, making it harder to reach agreement
- Shared care has a negative impact on children where they are exposed to sustained levels of conflict and acrimony between parents, rigid arrangements which fail to take their needs into account, where one parent holds safety concerns, and if a child is under the age of four

⁷⁵ Trinder, L et al (2009) Making contact happen or making contact work? The process and outcomes of in-court conciliation. Department for Constitutional Affairs

- A legal presumption can deflect attention from or inhibit parties from raising concerns about violence. Research into the outcomes of in-court conciliation in the UK has also found that the pressure to reach agreement regarding contact appears to deflect concerns of domestic violence and other forms of risk. Findings suggest that the gap between parental concerns and risk management is very wide and the pro-contact emphasis can make it difficult to raise issues of violence and abuse and have them taken seriously.⁷⁵

A legal presumption is a redundant tool for the promotion of shared care post separation. Firstly, it is unnecessary for the majority of parents who come to their own arrangements voluntarily. Secondly, a presumption in and of itself will not guarantee the quality of relationships between parents, and between parent and child, that are fundamental to successful shared care arrangements. A legal presumption falsely conflates shared care and the child's best interests, and confuses parental responsibility with parental rights. Issues to do with where a child spends their time must be dealt with on a case by case basis and the best interests of the child must remain squarely at the centre of decision making. In addition, a presumption would potentially limit the choices parents have when it comes to deciding what the best contact arrangements are to ensure their children's welfare.

If a legal presumption of shared care were introduced it would impact most directly on the small minority of parents who end up in court, those with the most conflicted relationships and those in the most difficult circumstances where there may be child welfare concerns, such as violence, abuse and addiction. Investment in a range of services that all separating parents and their children can access readily would yield better results than creating a statutory straitjacket that propels parents down a predetermined route.

Chapter 6

Financial, housing and employment issues affecting shared care arrangements

⁷⁶ Jenkins, S. (2008) Marital splits and income over time. ISER working paper series. No. 2008-07. University of Essex

⁷⁷ Trinder, L. (2010) Shared residence: a review of recent research evidence. *Child and Family Quarterly*, vol 22, no 4, pp 475-498

⁷⁸ Social Trends 38, table 10.10, 2005

⁷⁹ DWP (2009) Households below average income – an analysis of the income distribution 1994-95 – 2007/08. The UK government uses the equivalence scale known as the modified OECD scale to measure official poverty figures. This measure is widely accepted but it may still underestimate the financial needs of single parents relative to couple parents

Across the UK three million children live in poverty. According to family type, about half of children in single parent families experience poverty compared with almost a quarter of children in couple families. After separation a single parent will typically see a drop in income of about 12 per cent.⁷⁶

There is little data available specifically on the financial circumstances of parents trying to establish shared care arrangements, although there is some data to indicate that parents who have chosen to share care tend to be on higher income levels.⁷⁷

Children in single parent families are at higher risk of poverty than children in couple families, and 26 per cent live in non-decent housing.⁷⁸ Single parents are more likely to be working in part-time (and often low paid) jobs, and more likely to be affected over the next few years by public spending cuts, in particular reduced support for childcare costs.

Many of the financial difficulties affecting single parents are likely to affect both parents in any shared care arrangement. Running two households is more expensive than one, particularly where both households have to provide a home for children. Adjusting to take account of costs that a couple shares, the government estimates that a single parent household needs about 74 per cent of the income of a couple household in order to reach a similar standard of living.⁷⁹

We examine below some of the main financial issues affecting shared care, some of which are likely to pose barriers, particularly for parents on low incomes or benefits.

A. Sharing benefits

For low income families, child benefit is an important part of family finances both as a significance source of regular weekly income in its own right, and because child benefit determines entitlement to some other benefits such as income support for single parents. The entitlement to child-related benefits is based on the assumption of a main carer in both couple and separated families. It is paid to the parent with the main responsibility for the child. As a general rule, wives and mothers have priority in claiming child benefit in couple families. In the same way child tax credit is paid to the main carer.

Under current rules, child benefit cannot be shared between parents. In shared care arrangements where parents can't agree, Her Majesty's Revenue and Customs (HMRC) decides "main responsibility" based on several criteria. Government proposals to introduce major changes to the benefits system through a universal credit are also predicated on an assumption that child benefit will not be shared.

Whether someone is designated the main carer of children also affects the allocation criteria for social housing (priority need) as well as housing benefit entitlement (number of bedrooms) and council tax benefit calculations. In practice, local authorities take child benefit payments as proof of the child living with that parent, a decision-making short cut that is problematic in instances of shared care.

Gingerbread's telephone helpline receives calls from some parents seeking advice on shared care. A typical example of a shared care query is outlined below:

CASE STUDY: SHARED CARE AND BENEFITS

John shares the care of his preschool age daughter. She stays with him 3.5 days per week. Currently he is unemployed. His ex-partner receives child benefit, child tax credits and her housing benefit calculation takes into account that her daughter is living with her. John is claiming jobseeker's allowance, and his housing benefit is based on a single person. As he is under 25 he is only entitled to the shared room rate of housing benefit. JobCentre Plus will not recognise John's caring responsibilities and he has been told he needs to be looking for work of 40 hours per week.

⁸⁰ From 2012 income support entitlements will change according to the age of the youngest child. Only single parents with their youngest child under the age of five will be entitled to claim income support

In this example John cannot claim income support⁸⁰ even though his daughter is under the age of seven, despite sharing the care of his daughter equally with his ex-partner, because he is not in receipt of child benefit. He faces a shortfall in his housing benefit because the calculation for his entitlement doesn't take into account his caring responsibilities. This has also impacted on his jobseeker's allowance claim and he is unable to take advantage of the flexibilities for parents with caring responsibilities who are looking for work. This includes restricting availability for work without the risk of sanction.

Sharing benefits might appear to be a fairer solution where parents are sharing care, but in practice is likely to mean that both households will face financial hardship, and that neither has adequate funds to cover the costs of looking after children. In most cases it would lead to a transfer of income from the poorer to the better off parent, and from the mother (generally on a lower income) to the father, with a negative poverty and gender impact. Benefit sharing would also add significant complexity to a system that the government is currently attempting to simplify.

For the above reasons Gingerbread and One Plus One do not think that sharing benefits is the right solution. We recognise that a benefit model based on the assumption of a main carer could, in some shared care cases, create unjust anomalies whereby the parent entitled to the child-related benefits is on a higher income than the other parent in the shared care arrangement. This could result in significant financial hardship for the shared-care parent not recognised by the benefits system as having substantial caring responsibilities. There needs to be an appeals mechanism in the system to resolve such anomalies when they arise in shared care arrangements. If the considerable financial barriers to low income families trying to establish shared care are to be overcome, government will need to address the financial implications of supporting a second household at a level that provides for children's needs.

B. Child maintenance

It is important to consider the financial payments made between parents in shared care arrangements. Children cost money. Money not just for the immediate needs of food and clothing, but the costs of running a bigger home, utility bills, transport and costs related to schooling.

⁸¹ The CSA is part of the Child Maintenance Enforcement Commission. For more information see: <http://www.csa.gov.uk/en/about/index.asp>

Child maintenance can be privately agreed between parents or determined via the Child Support Agency (CSA).⁸¹ There are some limited circumstances when the courts are still involved in setting the amount to be paid.

For parents who voluntarily enter into shared care arrangements and have an amicable relationship, many will come to their own private agreement about child maintenance. Who pays and for what, how much and when will vary between private arrangements according to individual circumstances. There is little information available about the configuration of payments and the drivers behind decision making in these types of agreements.

The statutory child support formula used by the CSA to establish child maintenance liability bases its calculations on a percentage of the non-resident parent's net income. Liability is then reduced depending on the number of nights a child spends on average with the non-resident parent. Terminology is important here. A parent deemed the "non-resident parent" is the parent who is not living in the same household as his/her child. A "parent with care" is the parent with whom the child has her/his home and who usually provides the day-to-day care.⁸² Parents who use the CSA tend to be in situations where either coming to an agreement voluntarily has not been possible or an existing arrangement has broken down. These parents are more likely to be conflicted and less able to cooperate with one another.

⁸² See Child Support Handbook. 18th edition 201/2011. Child Poverty Action Group

The table below sets out the formula for the current child maintenance scheme, which has been in force since 2003. One of the difficulties with this model is that disagreements about contact can become bound up with questions of financial loss or gain.

STATUTORY FORMULA FOR CHILD MAINTENANCE

Basic rate

= percentage of the non-resident parent's net income:
1 child = 15% 2 children = 20% 3+ children = 25%

Reductions in basic or reduced rate for shared care:

NUMBER OF NIGHTS PER YEAR ON AVERAGE	FRACTION TO SUBTRACT
52 to 103	One-seventh
104 to 155	Two-sevenths
156 to 174	Three-sevenths
175 or more	One-half (and a further deduction of £7 for each child)

The CSA adopts a wholly different definition of shared care to that used in this report. The CSA uses the term shared care to cover an array of parenting arrangements, starting from a situation where there is more than one person sharing the care of a child with at least one overnight stay a week on average. In a parenting arrangement of at least three nights per week (156 nights per year), liability reduces to three sevenths. For 175 nights a year (indicating a child's time is divided almost equally between parents) liability reduces to a half of net income plus an additional deduction of £7 for each child. Based on the CSA's assessed caseload for 2010, only 7,600⁸³ separated parents (out of a total of 854,300 cases with a child maintenance liability) are in a shared care arrangement of either three or four nights a week with the "parent with care" (1,200 at three nights and 6,400 at four nights). Thus shared care arrangements that are substantial or equal only account for a very small proportion of the CSA's caseload.

⁸³ Figures rounded to the nearest 100

The CSA formula for determining child maintenance payments is based on a main carer model similar to that of the benefits system. This reflects the circumstances of the vast majority of parents using the CSA to secure financial support for their children from the other parent.

However, when there is substantial or equal shared care, the CSA continues to use the terminology "parent with care" and "non-resident parent". The assumption of a main carer on which the statutory formula is based does not adequately reflect the circumstances of parents who share care. Where there is substantial or equal shared care the designation of "parent with care" and "non-resident parent" is inappropriate as there is no longer a clear distinction between the two parents. The CSA needs to take into account that both parents have caring responsibilities and will, by virtue of the substantial time the child spends in each household, be providing materially for the child.

Is there therefore a need for child maintenance payments in situations where parents are substantially sharing care? We know from calls to Gingerbread's helpline that shared care parents classed by the CSA as "non-resident parents" can struggle to pay child maintenance when they are on low incomes, especially if their circumstances change unexpectedly, for example shortened work hours. Both parents will have the costs of running a bigger home and will need to find money to cover transport costs and childcare. On this basis it appears unfair that one parent would be liable to pay the other for child-related costs both are sharing.

This is a difficult and controversial area. We start from the view that children need both parental engagement and material support – which in a shared care arrangement is provided by both parents. We are also concerned to ensure that children are protected from poverty; one parent is often significantly poorer than the other and in the majority of cases this is the "parent with care". Child maintenance should enable children to benefit from the lifestyles of both parents. In order to protect the best interests of the child where there is a disparity of income between shared care parents, child maintenance may therefore still play an important role and we would support the continuation of a net transfer to the "parent with care". However, in the small number of substantial or equal shared care cases (beginning at 156 nights per year) a variation procedure should be established for situations where the "non-resident parents" income is substantially less than that of the "parent with care". The agency would need to decide whether payments should be reduced or stopped altogether, or if a net transfer should be made from the "parent with care" to the "non-resident parent".

Any changes to the statutory maintenance system must go hand in hand with better recognition in the benefits system of shared care and the additional financial burden it can place on both parents on low incomes.

C. Housing

Shared care arrangements require both parents to be able to maintain a separate household, and the cost of finding suitable housing can be a significant barrier.

⁸⁴ The current age limit is 25 and as such affects some single parents, but the increase in age as of April 2012 will have an impact on a much greater number of non-resident and shared care parents

Particularly pertinent to the issue of shared care is the change to the age limit for the shared room rate announced in the 2010 spending review and due to come into force from January 2012. This means that anyone single and under the age of 35 will only be allowed to claim a lower rate of housing benefit intended for a room in shared accommodation, and not the one-bedroom rate.⁸⁴ This will have a significant impact on parents not in receipt of child benefit wishing to have contact of any sort, but who also require help with their housing costs.

Neither shared residence orders nor a legal presumption of shared care can offer solutions to the logistical challenges of suitable accommodation or adequate financial support for both parents who might require welfare benefits.

D. Employment

Shared care is more prevalent among parents in employment. Employment that pays enough to lift the family out of poverty, and a family friendly employer sympathetic to the needs of each parent to balance work and parenting responsibilities, can make a significant difference to whether shared care arrangements work.

Currently the parent designated the primary carer – a single parent – is entitled to income support (IS) until their youngest child turns seven. Following the passage of the Welfare Reform Bill 2011 single parents will be expected to be available for paid employment when their youngest child reaches five. This is expected to come into force in early 2012. Single parents are then moved onto jobseeker's allowance (JSA) and will be required to seek work.

While on JSA, a single parent is entitled to a number of flexibilities such as being able to restrict working hours to 16 a week, and to fit work around school hours if their child is under 13. Currently, in shared care arrangements, only the parent claiming child benefit is permitted these flexibilities. This makes it harder for shared care parents to both find work that fits around their parenting responsibilities.

Parents sharing the care of their children face similar barriers to single parents seeking employment. Employer flexibility can make an enormous difference to parents who share care. The business case is well established in terms of the positive effect on retention and productivity, as well as saving on recruitment, induction and training costs. Family-friendly policies include availability of part-time or flexible working opportunities, a set number of paid "dependent leave days" a year, and access to affordable and good quality childcare. Paying for childcare is only set to get harder. Research⁸⁵ shows that single parents with two children, working full-time and paying for childcare could lose up to £2,000 a year as a result of government cuts to the childcare element of tax credits from a maximum of 80 per cent to 70 per cent of costs from April 2011.

⁸⁵ Reed, H. & Horton, T. (2011) Analysis of the impact of tax credit changes on working single parents. Landman Economics

It is clear that there are significant practical barriers to establishing shared care arrangements, particularly for families on low income or benefits. Sufficient income, suitable housing, flexible employment and affordable childcare are must haves in order to make shared care practicable.

Chapter 7

Conclusions

For a number of years, governments in the UK have taken a keen political interest in shared parenting and the greater involvement of both parents in their child's upbringing from early in a child's life. Children in separated families benefit from a good quality relationship with both parents. Any move towards facilitating child-centred, flexible and co-operative parenting should be welcomed – with the arrangements most likely to succeed where the emphasis is on quality of relationships rather than specific allocation of residency time. However, it is important that we understand better the consequences of shared care in separated families.

A legal presumption of shared care is an ill-conceived intervention. It does not create an environment where shared care works in the best interest of the child, nor does it guarantee the quality of parenting, which is key to child outcomes. Blanket legislation risks failing parents and children, in particular those families who end up in court. The Australian experience of a rebuttable presumption of equal shared parental responsibility raises significant concerns about the impact on children, and underlines the importance of the UK courts in ensuring that the best interests of the child remain paramount.

There are a number of ways in which the government can play a helpful role in supporting parents to co-parent together after separation, including:

- Increase the availability of funded early support services including information, advice, counselling and mediation, with good signposting to enable parents to access support and where possible avoid the need to go to court
- Protect the role of the family court as the final arbiter in the most difficult cases. These cases are often characterised by high levels of conflict, involving domestic violence, substance abuse and mental health issues. In this context the proposals to cut legal aid for private family law proceedings raise significant concerns
- Increase flexible working opportunities and paid parental leave, creating an environment where parental choice is less restricted in the first instance and which encourages improved work/life balance for mothers and fathers.

Looking at the current and proposed tax credit and benefit system, shared care is not financially practicable for families on low or modest incomes. Shared care becomes more feasible when parents have a financial cushion to meet the greater costs of running two households. For low income families shared care is simply not an affordable option even when other key factors are present. This is a significant problem that needs addressing. There is no formal provision within the welfare system to split benefits but more importantly the sums of money involved are too small to be shared. From our helpline we know this is hugely problematic for the shared-care parent without benefits who is likely to struggle financially.

Child benefit is a case in point. Currently child benefit – itself a passport to a number of other benefits – is paid only to one parent. In shared care arrangements this could be perceived as

unfair on the parent not deemed to be the main carer. While splitting benefits would appear to be fairer in these circumstances, in practice would be likely to mean that both households find themselves poorer. Moreover, given that in practice women are poorer than men, a change is likely to lead to a net transfer of income towards better-off groups, with both a negative poverty and gender impact. This is a very difficult and frankly unsatisfactory situation where children can lose out on a relationship which matters, if the financial arrangements aren't in place to sustain shared care in the long term.

There does not appear to be any straightforward resolution to this given that neither option is satisfactory. Forthcoming changes to the system – the introduction of universal credit – are likely to continue with the current system of deeming one parent the main carer. In the current economic context it is highly unlikely that government will extend payments for children across two households, so significant financial barriers to shared care are likely to continue until benefit levels overall grow and until work, particularly part time work, pays better and is a viable option for more parents.

There are some specific practical policy steps the government could take in the short term that would help parents sharing care. These are outlined in the executive summary.

Finally, it is important to recognise that there are gaps in our knowledge about shared care, and there is a need to take steps to address these before embarking on significant reforms. Critically, there is a dearth of evidence about children's experiences and views of shared care. We need more large-scale, long-term research that takes into account children's views of their care arrangements and understand from their perspective what works for them, including how different pathways into and through shared care impact upon child outcomes.



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Firm Foundations

Shared care in separated families: building on what works

Philippa Newis, policy officer
Gingerbread

Published June 2011
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