

# Enforcement of Contact Between Children and Non-Resident Parents

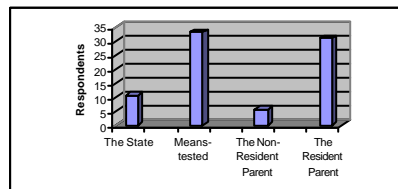
Cardiff Law School: Family Law Research Project

## Introduction

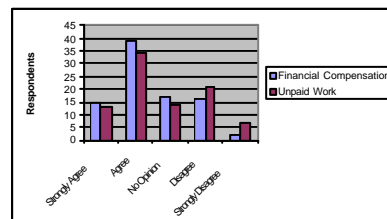
Under s.8 of the Children Act 1989 the court may make a contact order requiring a resident parent to allow contact as specified in the order (usually with a non-resident parent). A breach of this order constitutes contempt of court and, as a result, breach may be sanctioned through fining or imprisoning the resident parent.

There has been much dissatisfaction with the current law. For example, some have criticised the use of imprisonment, stating it is a sanction that may have a negative impact on the child's welfare. Others have criticised the sanctions because they are so rarely used and, therefore, ineffective. As a result, the Children and Adoption Act 2006 will amend the Children Act 1989 to introduce two new sanctions for breach of contact orders; unpaid work and the payment of compensation for financial loss. "Contact activity directions and conditions" will also be introduced with the aim of facilitating contact. These include requiring attendance at parenting classes and other specified activities.

It was our aim to discover the views of legal professionals, specialising in family law, on the current and new sanctions.



How Activities Named in Activity Directions/Conditions Should Be Funded



\* Parents in Contact Disputes are Unlikely to be Able to Comply\*

## Method

In order to collect data for our research, we designed a questionnaire which we distributed via an internet link. The list of solicitors contacted was gathered from The Law Society. A range of barristers were located from an online database called 'InfoLaw'. Professionals were therefore drawn from a wide geographical area. A total of 91 responses were analysed.

The research involved collecting both quantitative and qualitative data. The qualitative data supplemented the basic responses with reasons for their answers, thus giving us a more in-depth analysis of respondents' opinions.

## Results

One of our research aims was to discover whether legal professionals viewed the current range of available sanctions as adequate. Most of our respondents (84.3%) felt they were not. Seven respondents specifically stated that **more sanctions were needed**, whilst another seven felt that the current sanctions were **too extreme**. Twenty-six stated that sanctions were simply **not used enough**, with one commenting that enforcement was *'an absolute joke'*. Another solicitor stated that in over twenty-seven years of experience they had seen only two orders enforced.

In light of the proposed amendments, we wanted to learn what professionals thought the aim of such sanctions should be, e.g. to support, punish or deter. The most popular response was to **'deter'** breach. Next was to **'support'** parents, to ensure meaningful contact, as *'their lives go on long after the court proceedings have ended'*. This was followed by a significant proportion stating that it was a mixture of **'all three'**. Which should be used in any particular stage varied depending on individual circumstances.

Interestingly, despite the above findings, when asked whether the new sanctions would serve as adequate deterrents 46.4% of respondents replied in the negative. This may be linked to our previous finding that sanctions are apparently **rarely enforced**; therefore the threat of punishment is almost non-existent and the result is that the resident parents *"know this and therefore act accordingly."*

Despite this, there was an almost equal split between those who thought that financial compensation will work in practice and those who didn't. Similarly, there was a 56:44 split between those who thought that unpaid work would be successful in practice and those who didn't. We have identified two possible reasons for the negative responses.

With regard to **financial compensation**, most respondents believed that parents would be **unable to afford** this sanction and many agreed that **unpaid work** would not be practical for many parents due, for example, to **childcare/employment responsibilities** and therefore, as a result, this measure was thought unlikely to be imposed.

Predicting that the new sanctions may not be regarded as effective, we asked whether an interim stage of mediation might be beneficial before resorting to sanctions. A large majority (69.3%) of respondents felt that it would be. One theme that emerged from the comments was that mediation may better inform the parties on how to resolve their issues and *'work together to focus on a way forward.'* However, many respondents who believed it would not be beneficial were concerned that it would just result in further **delay** which would not be in the best interests of the child.

When asked whether contact activity directions and conditions would fulfil their purpose of facilitating contact, the vast majority of professionals said that the only way that these provisions could work is when the parties are already willing to abide by them. In cases where the parties are hostile towards one another and *'determined to frustrate the situation'* the provisions were expected to have little effect.

## Conclusion

Several problems were highlighted in the current law, as well as the new. Sixty percent of the legal professionals questioned felt that the law does not strike the right balance between the interests of resident parents, non-resident parents and children. The most common reason given for this view was that the non-resident parent often gets *'a raw deal'* in proceedings. Others criticised the fact that resident parents could easily sabotage the process through, for example, causing delays. Several respondents were in favour of a presumption of shared residence.

The new law on the other hand may be ineffective if the current problems relating to lack of enforcement remain untackled. In particular, the new sanctions may not be imposed often enough due to the financial constraints on the parents who are most likely to be involved in such proceedings.

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