

DECISION-MAKING IN THE CHILD'S BEST INTERESTS

Legal and psychological views of a child's best interests
on parental separation

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on parental separation

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PART THREE: THE PRACTICE OF SEPARATION LAW.

3.1 *METHODOLOGY.*

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3.1 METHODOLOGY.

A. Introduction.

The empirical research to test the thesis as to whether the law in theory or practice gives any objective meaning to the requirement of the child's best interests, suggested a twofold approach. Having examined the description of the law as presented in the textbooks, the focus of the study must shift to the question of the gap between theory and practice. There are two questions: what do the practitioners say they are doing? and how does this measure against what can be observed?

The choice of these two questions stems directly from the extent of the previous studies in this area. The studies already referred to above present essentially two approaches. First, the quantitative survey which gives the overall context of the work indicating the extent of the problems and practice, and a picture of the individuals involved both as professionals and clients of the law. In the second approach, the research shows the experiences of the clients in the legal process of separation law. It was felt that there were sufficient, high quality studies presenting the quantitative data to justify moving away from such a study in the investigation of this thesis. Further, it was felt that the thesis required the more personal responses that a qualitative methodology could provide to develop answers to the problem of the meaning of the child's welfare. In opting for a qualitative study, the immediate temptation would be to concentrate the research on those who use or experience the system, as, at first sight they would appear to offer a powerful description of the behaviour of the law in interpreting the needs

of the child. Indeed, this client-based study could have included the child's perspective of their needs and welfare and how they felt they had been treated by the law.

Such a client centred study was avoided for three reasons:

i. there is already a substantial body of work which takes this approach. The work of Davis (1988) has already been noted as an excellent survey of the reactions of the parents to the legal process of separation, and the work of Mitchell (1985) gives a full account of work with children exploring their perceptions of their own needs and the process of the separation of their parents;

ii. it was felt that those in the throws of separation would, at best, not welcome the intrusion of a Ph.D. student in a very personal matter, and at worst, have the trauma increased - the latter point was overwhelming in the consideration of studying the children;

iii. there were real methodological considerations against such a study. Parents go through one or two separations involving the law, and therefore the influence on their perceptions which is made by the actions of the professionals, and indeed the outcome of their case would necessitate a sample infinitely larger than could be managed within the context of Ph.D. research. Further, the study would give an answer to the question did the law and the practitioners produce a result which, in your opinion, was in the best interests of your child. Clearly this would be valuable, and the parents right to determine the direction of their family life is crucial, but this is the interest in the research mentioned in point *i* above. The question under investigation is slightly different: has the practice of separation law developed an interpretation of the child's best interests?

It was felt that the methodology for answering such a question lay in approaching a sample of the professionals working in the field to ask how they perceived the

issue of the child's welfare, and how they arrived at that interpretation. A range of methods was considered to find the best methodology for the study. Participant observation would allow the researcher to experience the professionals methods at first hand, and thereby make a judgement as to the interpretation of the child's welfare. This, on its face, seems to be the purest form of qualitative research, however it is dependent upon the interpretational values of the researcher alone, as it is difficult to pursue clarification of points from within the disguise. Also it would be impossible to construct such a methodology for this thesis. Thus, the available method was some form of questionnaire.

In deciding the type of questionnaire method to be used there were two considerations: what level of data was desired?, and what sample size would give reliable material? The cost constraints could be seen as a third constraint. A pre-coded questionnaire could be used by post to give a relatively large sample size, but the data would not be very subtle. A relatively unstructured interview could produce a deeper and changing understanding of the subject area, but would be very costly in terms of time, and would not necessarily ensure uniformity, and therefore comparability, in the questioning. Given that this research was over a short period of time (three years) and at the start of the researcher's career, it was felt that a more unstructured questionnaire form, one which would allow the subjects to explain the procedures and opine more generally, was necessary; the data gained from a highly structured questionnaire are much more dependent on asking the correct questions at the outset of the research. It was felt that a semi-structured questionnaire conducted by face-to-face discussion would allow the twin benefits of steeping the researcher in the idiom of practice, and producing a degree of comparability between subjects for analysis purposes.

B. Preliminary Interviews and Questionnaire Design.

A detailed account of the preliminary interviews is given in Appendix A.1. The library based research not only showed the actors involved in separation and the broad legal concepts governing the process, it showed that there was a considerable confusion as to the precise definition of the legal concepts. It became clear that the traditional account of the law did not include information about training of the professionals involved in the process, or about the daily process of the professionals as opposed to the practice of the law in the courts; the majority of the work of the practitioners was outside the scope of the textbook accounts of the law. Thus, the preliminary interviews were used for two ends: first, to give a brief understanding of the daily practice of the processes of separation law, and secondly, to allow the questionnaire and interview technique for the research - the methodology - to be developed and piloted.

Initial interviews were conducted with two solicitors, one educational psychologist, and two court welfare teams. The subjects were drawn from areas away from the proposed study areas. These interviews concentrated on the first objective of moving from a book-learned understanding to a realistic knowledge. Clearly this could only be the start of that move, however it highlighted the issues which were relevant to the practitioners rather than the textbook writers.¹ From these interviews, a questionnaire² was drafted and developed, piloting it with a court welfare officer in an area outside the study area.

Further to these interviews, meetings were held with the managers of the court welfare teams and conciliation units in the two proposed study areas. These were initially to describe and explain the study, but they also served to give valuable background information about the various services. The information gained in the meetings also allowed for fine tuning of the questionnaire. In all the services, a

presentation was made to the members of the teams before the work started.

C. Sample Size and Composition.

The final element of the methodology was the sample. This consisted of two issues: who was a separation law "professional"? and how large a sample was necessary? Coverage did not prove to be a difficulty. The range could be seen as including the judiciary, magistrates, lawyers, court welfare officers, conciliators, mediators, and social workers. The range divided itself into three groups. In practice, the courtroom, as has already been seen is atypical of separation cases, and is reflected in caselaw; therefore the judicial and magistrates' element of the range were felt to be one aspect. Barristers, with their essentially court based work in this area of the law were seen as partly in this group. At the other end of the range, social workers and other carers may be involved in separation cases, but again these are in the atypical case, perhaps relating to care, or where the family is already a concern of the social services department. Thus, this group could be seen as incidental to the practice of separation law. The central group of solicitors, court welfare officers, and conciliators was perceived to be where the majority of cases were framed and negotiated, and the interpretation of the child's welfare was most in question in this group. Given the finite nature of the research, it was felt that the sample should concentrate on this middle group. It was felt that barristers and Family Mediators should be included if at all possible.

In terms of the size of the sample, there was one consideration which was given great weight, namely the geographical differences in practice, especially in court welfare, and conciliation practice. It was felt to be imperative that the sample chosen should reflect this in some way to enhance the credibility of the research.

Further, contrasting geographical areas could produce interesting variables in the findings. Given the decision to opt for a semi-structured questionnaire, the geographical element was limited to two centres. After some negotiation, two northern cities of comparable size were chosen, and a sample of the professionals was devised.

Having identified the two geographical areas the sample had to be chosen. Given the nature of the study, the appeal was largely a question of approaching the professional bodies - the Conciliation services, the Court Welfare Teams, and the local Solicitors Family Law Associations or known practitioners, and compiling a list of those willing to be involved in the study. This rather unscientific method of selecting the sample produced a strong sample of the 'areas' practitioners. The Court Welfare teams, having agreed to participate on a managerial level, had samples of over half the staff in each team willing to participate in the study; the conciliation services showed the same response. The solicitors were more difficult to sample as they have no managerial level to act as a whip. By approaching a known family practitioner in each area, a list of names was suggested covering both practitioners working almost exclusively in child law and those who were general practitioners occasionally venturing into divorce work. Thus, from these lists, a sample could be produced giving a broad sample in terms both of number and of experience. Thus part of the study took a great deal of time and diplomacy. A major factor for the omission of barristers from the sample is that all those approached declined to take part. Despite this, the sample is a useful section of the practitioners who work in separation law in the daily business of negotiation and preparation of cases, rather than the more atypical courtroom case. Some barristers, while not taking part in the study, were observed in the courts.

The Sample.

	AREA ONE	AREA TWO
Solicitors.	7 (6)	6
Ct Wel. Off.	5	7
Conciliators.	4 (3)	8 (7)

Number in bracket indicates number of responses to questionnaire; extra professionals gave interview (opinions included in results).

D. Observations.

The study described above would give the interpretation of the child's welfare which the practitioners felt they were employing, however, it was felt that some form of test should be attempted to verify the claims. This, it was hoped, would be achieved by observing the practitioners in their various work-places. This was the most unsuccessful part of the research. Appendix A.3 gives a description of the observations undertaken, and an interpretation of some findings as to the staging of the process of separation law, however, it was not possible to gain access to enough cases to claim that this part of the study achieves the objective of a test of the claims of the practitioners. The observations are offered simply as this as they make, what is considered to be a thesis for future work, namely that the fora for separation law includes not only the theoretical processes but the material environment, and the quality of the venues observed within the context of this research suggested that separation law is presented with little regard to the impact of the surroundings of the office or the court. It is in an

appendix as it remains largely unsubstantiated.

E. Questionnaire.

The questionnaire was divided into four parts in an attempt to see who the professionals and clients in the process were, and how the professionals undertook their work, especially as regards the requirement to place the child's welfare as first and paramount consideration. In the first part, a "biographical" section, the participants were asked about their involvement in the legal process of separation. This included the length of time they had been practising, the nature of their caseload, and the range of work they undertook beyond separation law. It was felt necessary to ground the data with a reference to the experience of the professional. A second section within the biographical details concerned the training of each participant. Participants were invited to indicate the content and duration of their initial training, and then to indicate both the availability of, and their experience of, "in-service" training. In the latter part the focus was on the extent and usefulness of the provision, the teaching methods and content of the training, and, especially, the availability of training with other related professionals and disciplines. This was included as it clearly offered a comment on the types of issues which were seen as "live" in the work, and also offered a picture of the range of training and organization available, given that the initial reading had indicated that there was little central organization of training for the professions. The final question in part one asked what skills the professional thought important in his or her work.

The second part, "Your Rôle in Child Custody and Access Disputes", sought to clarify the general working practice of the subjects and how they interacted with their fellow professionals. The first question asked who the client of the

professional tended to be; parent, child, or other. The questioning continued by seeking the timing of the particular professional's involvement in the process of separation, and how that involvement sat with the work of other professionals. The questions also sought to discover how the professional related to his or her colleagues in the different parts of the process, and how contact and discussion was made. This part carried a separate pair of questions for the lawyers, asking whether they had a preference as between the different courts available to hear issues of the child's welfare (where they had a choice), and whether or not they knew of, and used, the conciliation service.

The third part, "Type of Client", attempted to ascertain both the nature of the client group, and, more importantly, how the professional perceived and related to the clients. The questions asked directly who the client was, and how many of the cases dealt directly with children. A further group of questions attempted to test, at an impressionistic level, whether there was a correlation of any kind between the social group, age of client, and the approach displayed to the process of separation. This stemmed from an indication given by one of the solicitors in the preliminary interviews that there was such a correlation in his experience. Clearly, a positive correlation at this level would simply indicate the need for a future, quantitative piece of research to establish any statistical validity. Such a study would require a detailed analysis of the caseloads of a wide statistical sample of the range of professionals. After this question group, the sample were asked about their rôle in relation to the clients emotional state and attitude to the separation. Whether other professionals were invited to assist this part of the process was also of interest. A final question asked whether the professional would ever advise the client against a course of action. This was directed in part to the professionals' feelings as to the competence of the parents to determine the best interests, partly to find out whether the professional often made judgements as to the correct proceeding for a client, and partly to encourage the

professional to talk about how they perceive the clients reasons for seeking a particular action. Essentially the question was addressing issues of dispute ownership, and considering a theory from the preliminary study which suggested that there was a bias against pursuing certain types of cases to the court, because they were unlikely to succeed.

The final part, "The Best Interests of the Child", sought to establish how the practitioners framed an image of the welfare of the individual children in the process of parental separation. This had two aspects; the process of gaining evidence as to the child's welfare, and the personal interpretation and definition of the child's welfare held by the practitioner in relation to their work. Thus, in relation to the first part, the questions concentrated on whether the practitioner had a standard approach to discovering the child's welfare, the degree of involvement of the child in the process, and the competence of the child to be involved in the process. Further, the scope of the group from whom evidence was sought, the involvement of psychologists and other "experts", and the relationship between the child's welfare and the parents' interests was also examined. To examine the second issue, the professionals definition of the welfare of the child, the participants were asked to evaluate first a series of statements derived from the case law, and then a series of factors in the child's welfare suggested for use by social workers when assessing the quality of parenting in care cases. The final questions asked if the professionals had a checklist of welfare factors which they looked for in assessing the welfare of a child, and further, what factors they thought were important.

The aim of the questionnaire was twofold; to gain answers to the same questions posed to all the practitioners in separation law, and to initiate a discussion about the important factors in understanding the welfare of the child and separation law generally. The remainder of this part of the work is a discussion

of the results of the empirical survey.

1. The details of the interviews can be found in Appendix A.1.
2. Appendix A.2.

PART THREE: THE PRACTICE OF SEPARATION LAW.

3.2 *THE EMPIRICAL FINDINGS.*

- A. Biographical: Experience and Training:
 - i. experience;
 - ii. training.

- B. Your Rôle in Child Custody and Access Disputes.

- C. , Type of Client.

- D. The Best Interests of the Child:
 - i. the process of determining the child's best interests;
 - ii. the interests of the child and the desires of the parents;
 - iii. the professionals' understanding of the child's best interests.

3.2 THE EMPIRICAL FINDINGS.

A. *Biographical: Experience and Training.*

i. experience.

Three questions were asked relating to length of professional involvement in custody and access cases, caseload, and range of work undertaken in practice.

Length of professional involvement: Area 1.

In study area one, the number of years experience of the Solicitors was, on average, the greatest at 13 years 8 months. Four of the sample had over 15 years practice experience, one had 12, while only one was recently qualified at 3 years experience. The court welfare sample had on average 7 years experience. Here the range was greater (13: 9: 8: 5 years: and 3.5 months). The officers generally specialize in court welfare work later in their careers, and thus the length of experience in probation work was considerably longer than the range above (Probation experience prior to court welfare work 24: 18: 13: 0: 16 years). The conciliation service in the area had been set up some 5 to 6 years before the study and all the conciliators had started at or near its creation. Thus, the average experience was 5.5 years (Range 5.5: 5.5: 6: 4 years). In each case the conciliators had wide experience of up to 20 years in social work and other related fields. It was indicated that, due to the part-time nature of the conciliators, the norm could be varied for example, by school holidays.

Weight of caseload: Area 1.

The caseload undertaken by the various professionals varied greatly. The conciliators, being part-time and voluntary in nature, varied in terms of their monthly caseload. On average a conciliator would have two cases in any one month, although cases might remain dormant in terms of sessions for some time. The consensus was that the equivalent of two new cases per month would be an average caseload. The co-ordinator of the service was employed on a full-time basis, and was able to maintain a caseload of around eight cases per month. Court Welfare Officers indicated that they would have an average of five to six new cases to report on per month, and felt that this would be a manageable caseload. The range was 4: 5.5: 6 per month, and was slightly distorted by a new member of the team who had gained some 30 cases in 3.5 months. The officers indicated that there was a considerable gap between finishing a report and the cases coming before the courts. This effectively meant that each officer would have about 20 reports outstanding at any one time, waiting for the conclusion in court. Over a year an officer could expect an average of 60 - 70 cases.

The solicitors presented the most divergent responses to this question. The average was about 250 cases on-going over the course of a year. However, the range was quite astonishing. At one end, one of the sample only did a little matrimonial work and carried about 24 custody and access files; at the other, a partner specialising in custody and access cases within his family law department had 400 on-going cases. The remaining participants had around 250 cases. By "on-going", the participants indicated that the cases were at many different stages, but never really closed. Some had only made the overtures of a case, others were in the throes of preparation, while other clients had orders, but still contacted the solicitor whenever the access was not observed. Thus, it was apparent from the explanation of these answers that the clients expect a number

of functions from their solicitors, and indeed this was suggested to be linked to their ability to come to terms with the changing arrangements of their parenthood and relationships. On a monthly basis, a participant would have about 12 to 40 cases, however, any one of the caseload may become "live" at any time. Thus, the solicitors work seems to be less predictable; the length of the working day would indicate that the workload could become overpowering.

Range of work undertaken: Area 1.

In terms of the range of work beyond custody and access undertaken by the participants, one conciliator indicated a willingness to address issues of property and financial settlement, new partners, and work with grandparents, to facilitate wider access to the child, while the others in the sample suggested that other separation issues were the concern of other professionals, and the focus of the conciliation service was on the child. In terms of their work outside conciliation, conciliators came from a wide range of professions from lecturers to housewives. The fourth conciliator offered "pre-divorce" discussions for those contemplating separation, and divorce counselling. Both these facilities were outside the normal scope of the conciliation service and offered independently.¹

Court Welfare Officers offered a much more structured range of work. Alongside custody and access reports, all the officers were also engaged in some wardship, *guardian ad litem*, custodianship, and supervision work. Others were involved in an access centre - offering supervised access. The officers suggested that in all their work the child's welfare was the central issue, and held the same problems.

Solicitors again offered the widest range of answers. Some practised solely in child and family law, one training to be a Family Mediator. Others mixed their family practice with a variety of subjects - personal injury, crime, and road

haulage. The solicitors suggested that of the divorce cases they saw, between 50% and, usually, over 70% concerned children. This was reported in both areas.

Length of professional involvement: Area 2.

In study area two, the average length of the experience of the sample of solicitors was 15.85 years. This slightly masks the fact that the range of the sample was 12; 12; 14; 15; 17; and 25 years, thus, a figure in the early teens would be a more useful average. It should be noted, however, that these represented a sample from a very tight-knit community of lawyers, and especially family lawyers, and that the solicitors within the community of specialists seemed to boast a long service generally. The conciliation service was created six years before the study and, as in the first study area, the conciliators had largely been recruited at that time. Thus, in the sample the average was just below 5 years, and the range showed an initial recruitment, followed by later additions: 6; 6; 5.5; 5.5; 5; 4.5; 3.5; 3.5. The court welfare officers showed a range of service. All the sample had joined the specialist service within the previous five years, however their experience in probation work generally ranged from 25 years to a much more rapid specialization. The average specialization in court welfare work was 3 years, the range being: 5; 4; 4; 3.5; 2.5; 1; 1.

Weight of caseloads: Area 2.

The different caseloads of the sample was again difficult to quantify, mainly because the records are not kept by the professionals. The sample of solicitors again showed by far the highest number of cases which could be described as on-going, although in this area, the family specialists also took on a wide range of other work and two of the sample worked on a more part-time basis, thus the figures look smaller for them and distort the average caseload. The two part-time

solicitors had between 167 and 300 cases on-going at the time of the interview (the latter could be described better as flexible time, working less during the school holidays). In the first, about two-thirds were custody and access, the remainder being wardship. The remainder of the sample had caseloads in custody and access and related work of an average of 250 cases. This again disguises a range where one solicitor dealing with a large firm's custody and access workload had around 500 cases on-going with around 40 to 50 cases opened each month, whereas the remaining range was 100; 100; 200.

It is worth noting here that the range of the solicitors' caseload correlates directly to their range of work undertaken. As has been noted two solicitors worked on a part-time basis, and both these professionals undertook only family work, covering custody and access, wardship, child care, and domestic injunctions. Further, one solicitor worked full-time on child centred issues and family proceedings generally. Of the remaining three solicitors, one had about 200 on-going cases and also undertook general litigation, and agricultural matters, practising out of the city in a small market town; another had about 100 family cases and dealt increasingly with criminal matters and road traffic law; the last supplemented 100 family cases with conveyancing and wills, again practising in a small general office in a market town outside the city. Here it was noted that those engaged in a relatively small amount of family work were also viewed by their colleagues as part of the ethos of good family practice, and specialisation did not necessarily indicate exclusivity.

The caseloads of the conciliators were again much smaller than the other professionals as conciliation is voluntary work in the study area. The average number of cases undertaken by the conciliators varied according to their availability. Excluding the first subject, who was a consultant to the service and did not undertake any conciliation work, conciliators undertook an average of six

cases per month each. The range, however, shows that some could undertake many more than others within that average: 12; 10; 7; 4; 4; 3; 2. In the main, conciliators in this service only undertook conciliation work. Two conciliators, however also offered other services under the banner of the service but on a separate basis - couples would not be required to undertake the other services as part of conciliation. One conciliator offered family therapy and counselling, while the other offered work with adolescents and their step-parents, and divorce counselling for individuals.

As to the court welfare officer's average caseload, the officers indicated that they generally had about 20 - 25 cases at the report stage at any one time, and that between 6 and 8 new cases could be expected monthly. The range was presented in different ways, but, basic trends could be found. The senior officer had a caseload of around two cases per month, the remaining workload coming from managing the service. Of the other officers, one reported a load of 45 cases in the previous six months, of which one-third was wardship, and the rest were custody and access. The remaining range was reflected by the general statistic indicated above. The officers indicated that this was a satisfactory load for the amount of work in each case. The officers all indicated that they were not solely engaged in custody and access work, although it was their main employment. They indicated that they would be engaged in reporting in wardship proceedings, in local authority interventions, and in satisfaction reports. In all the cases they indicated that the same basic questions of the child's welfare were being investigated, simply the fora were different.

Comment.

It can be seen that between the two areas, the professionals engaged in custody

and access work showed very similar experience and working patterns. Further, it will be noted that the solicitors appear to have a much greater caseload than the other services. This is perhaps because the solicitor does not close a file, as he or she is likely to be approached when an access visit fails. Such an approach will not necessarily result in further action. However, the feeling of the solicitor is that the client may return at any time. The other services offer a much more specific service having defined parameters. The solicitors' positions appear to bear out Davis' analysis that a solicitor becomes a partisan in the client's struggle to reform his or her life after separation.²

ii. training.

Alongside the study of the definition of the child's welfare, one of the other key aims of the study was to gain a picture of the training of the professionals involved in custody and access. There is very little literature which compares the nature of the initial training of the various professionals [most of the analysis comes from taking separate prospectuses for the courses and comparing what is offered.]; a systematic study of the in-service training of the professionals was not found. Thus, this study sought to start an analysis of the training already being undertaken in the study areas, and the possibilities for future work. The study came at a time immediately preceding the Children Act 1989, and therefore the training for the changes in the process was already underway. The content of the training and the methods were the twin foci of the questions, which formed the remaining section of part one.

Initial Training: Area 1.

The first question concerned the initial training of the professional. In area one, the conciliators showed an interesting phenomena: the conciliators recruited at the outset of the service were trained in an on-the-job manner, having no training course to start. Those trained after the initial batch underwent a training course which follows the national association's guidelines. All of the sample had a social work qualification, although this had not been compulsory at the outset of the service. It was understood from the interviewees, that conciliators today would have to have been trained in social work or a related discipline.

One of the interviewees indicated that the initial training to become a conciliator, had comprised basic matrimonial law, a history and philosophy of conciliation, and practical training. In conciliation, a range of training approaches could be seen, reflecting the fact that the whole venture is independent and very young. At the outset, the philosophy and practice were largely created out of the experiences of the conciliators in their practice: today, the national association has been keen to clarify the philosophy of conciliation and to standardize the training and process across the country. However, the individuality of approach has not been lost.

The content of the initial training for conciliation was undertaken on an in-house basis. The consensus indicated that the conciliation training incorporated a little teaching on the relevant law, a little psychology, a little work on counselling skills, a lot of work on conciliation skills (one of the conciliators felt that the training was all conciliation skills), a little work on report writing - especially on the skills of communicating the outcomes of conciliation sessions with solicitors and the other agencies, given that the content of the

conciliation is confidential, and yet some information about outcomes would have to be passed to the other professionals working with the clients. One of the conciliators reported that the training had also included issues surrounding housing and separation, an input from the divorce court welfare office, and case discussion. It became clear from the discussion with the conciliators, that this initial training was quite short, and the real skills needed to work in conciliation were gained while working as a conciliator. Thus, the case discussion and team meetings where difficulties could be discussed were central to development as a conciliator.

Two of the sample also indicated that their social work training had direct relevance to their work in conciliation. They covered issues of law, psychology, counselling, report writing, child care, adoption work, and sociology. The requirement of the national body of conciliation services that the conciliators should have a training in social work or a related profession would indicate that those becoming conciliators, from perhaps two years ago, will have the benefit of the wider training, both in time and in coverage, allowing the conciliator training to concentrate on the skills essential to conciliation. Social work training is not directly on the subject of divorce, however, and covers perhaps a different agenda relevant to care, adoption, and, indeed, probation and criminality generally. The indication from the central body is that the academic agenda of social work is the only desirable starting point for conciliation. This rather suggests that there is no need for a separate interdisciplinary approach to the philosophy and needs specific to divorce, but rather that it fits into general social difficulties.

In area two, the pattern was very similar, although the initial training schemes were more settled. The service stood outside the national body as it would, and did, take individuals from all walks of life for training as conciliators, and not

just those trained in social work. The training course was intensive over a short period of time, and then the conciliators were placed with well established conciliators as co-workers. The course was reported to take two full day sessions, and six weekly, two hour sessions. The days were at the beginning and the end of the course. The teaching methods included lectures and discussions, video presentations, and rôle-playing. The subjects included child development, legal issues, welfare rights, interviewing, divorce and its effects on children, and personal social skills. Reading lists accompanied the course. It was stressed that, as in the first area, there was no training in counselling as that is not the concern of the conciliation service. Two of the sample indicated that they had studied for diplomas in counselling and family therapy before joining the service. It was also apparent that some of the sample had a knowledge of social work issues and psychology from studies prior to becoming conciliators. It will be noted that the training here is well established, however it was created within the service itself from the perception of the needs of the clients held by the social workers and lawyers who organised the service. The consultants tended to be drawn from the field of separation professionals and academics; the consultant interviewed had a standard C.Q.S.W. training.

The Court Welfare Officers showed a pattern of a standard, established initial training. All the sample of officers reported that their training was postgraduate, either in the form of the C.Q.S.W. or in its predecessor, the Home Office "Raynor House" course. Most of the sample had entered the Probation Service directly after their degree studies - the sample had studied a range of subjects from Social Administration to English to Masters level - while one had come to Probation work after initial work in marital and family therapy. One of the sample reported initial training on a fast-streaming course, incorporating five lectures on clinical marriage work with a tutor from the Tavistock Institute.

The training of the court welfare officers is essentially a formal qualification in social work. The training is for a general career in probation and social work, and there is no specific, centralised training in separation philosophies or needs on moving into a specialist team. Training depends upon the philosophy of the individual office. [see p ¹³⁶ ~~000~~] The members of the sample who had been in the service for some years reported that their initial training had covered mainly criminal and probation issues: a lot of criminal law and criminal psychology, some counselling skills with offenders, a lot of sociology, and a lot of training in report writing - for social inquiry reports. The civil work training was minimal, reflecting the fact that a very small number of cases were undertaken by all probation officers, rather than seeing divorce work as a separate discipline. Indeed, the duties in the civil court were reported to be a pleasant relief from the usual work in probation. Further, this separation could be maintained as the numbers of divorcing couples coming to the service was smaller reflecting the smaller social trend in separation, and the use of the officer by the courts was more unusual.

Those officers who qualified more recently indicated that their training incorporated more work on civil matters, with some teaching on child psychology. One of the sample reported that the training included a lot of marital work, and community work. Counselling skills and the issue of learning report writing and how courts worked and the rôle of the court welfare officer, were reported to be learnt on placements. It is clear from the research that, while the subjects trained at different institutions, as civil work has become more important in the careers of social workers, so the initial training has moved away from dealing solely with crime related issues. However, the training of many of the present court welfare officers, it would seem, occurred before the shift in emphasis. It was also apparent that there was no conversion course to become a court welfare officer.

In area two, the pattern of initial training was again very similar. The officers had all gained a C.Q.S.W. (in this sample only one had gained the Home Office Certificate, the qualification given before the C.Q.S.W.). Beyond this qualification, one of the sample had taken an introductory course in family therapy, one held a diploma in social administration, and one held a diploma in social work and a certificate in social studies. As to the content of the C.Q.S.W., the sample generally expressed the view that the stress was primarily on criminal social work, one going as far as suggesting that the initial training was not relevant to civil work. One officer who had recently qualified indicated that the course had a strong family content. However, this was not borne out as a general experience amongst all the recently qualified: different courses have different weighting on content.

The report of the content studied showed that the officers believed they had studied between a little and a lot of law - most reporting that it concerned criminal law, with the more recent students reporting more family law in the courses. The officers indicated that they studied either a little or a lot of psychology, generally a lot of counselling skills, and a lot of sociology, social policy, and social work method. None of the sample indicated that they had any conciliation skills training. Report writing training seemed to be left to placements. However, one of the sample indicated that one of the most valuable parts of the training was in court duties and "how to work within the systems". The most recently qualified officer indicated that the course had a lot of work on how to deal with families. Again it was clear from the sample that the training is concerned more with probation work, and that court welfare work is more piecemeal, and reliant on later, in-house, training.

The solicitors showed a uniform initial training pattern. In area one, five of the sample had studied for Bachelor of Laws degrees for three years, and, having gained exemption from part one of the Law Society's final course, sat for the part

two examination after a further year's study. Having completed this training, the sample all undertook two years, articulated to solicitors before being fully qualified. The other two solicitors took first degrees respectively in Social Science and Mathematics, and then studied for one year to sit the Part One examinations, before moving on to the Part Two finals papers. The subject who took the Social Science degree completed the Law Society Examinations, both parts, by correspondence course while working as an articulated clerk. All the solicitors felt that much of the training which was directly relevant to their daily work was gained on-the-job.

The content of the solicitors initial training from degree to articles, was reported throughout the sample to concentrate on the law. Four of the seven sampled suggested that they had only studied the law in their initial training. Of the remaining three, two indicated that, as well as their study of the law, a lot of their professional studies concerned the correct writing of reports. It may be suggested that this element of the professional course could either be seen as the law or a separate skill needed for practice. One of the solicitors had studied a general social science degree, and reported that a general study of psychology formed a large part of the study.

In area two all the solicitors had gained LL.B. degrees, studied for the law society finals for one year, and then spent two years in articles. The content of the initial training was universally held to be all law with no other subjects from the list.³ One of the sample had had one days extra training before becoming a member of the child care panel, and a five day inter-disciplinary initial training as a Family Mediator. One of the solicitors reported that counselling and conciliation skills had been picked up during articles, while one of the solicitors felt that the training was largely irrelevant now, only having relevance as a training in arguing: another felt to have been "thrown in at the

deep-end" in matrimonial work.

It was particularly interesting that the solicitor in area one who had qualified within the last five years reported an initial training which also contained a little work on conciliation and counselling skills. This would indicate a departure in the training of lawyers. Thus, while the majority of the sample were trained within a very legal orthodoxy, the current thinking as to the content of legal practice courses acknowledges the need to incorporate issues of legal skills needed in practice beyond a knowledge of the law.⁴ However, it remains to be seen whether the new legal practice courses, offering a more "skills-centred" learning, will produce anything more than better mannered solicitors: the courses remain committed to studying law and legal process, rather than, in family law, the needs and meanings of family and individual behaviour. All the solicitors suggested that they had learned what they really needed to know whilst in articles.

It is clear from the descriptions of the professionals' initial training, that both the facts and techniques needed for the job are learned after initial training; further, some of the initial training is, or was, inadequate to the needs of the professional. This, of course, could reflect that the job of training for specific practice, in higher education, is inadequate. Alternatively, that the professional training is inadequate or too broad to give specialist knowledge. However, on the first point, of higher education, perhaps the aim is misunderstood, in that the courses are intended to give tools for thinking and handling material, rather than specific practical training. Which ever analysis is correct, the professionals seemed to feel that their experience in initial training was not one of usefulness to their job. This is perhaps relevant to the way in which the aims of higher education are presented to students: if we are about practice then it should be relevant; if academic, then this should be made

clearer; and if a mixture, this should perhaps be made clearest of all. Thus, the provision, content, and perceptions of in-service training become vital to the development of the service, or provision, of separation law.

In-service training: area 1.

Having established the pattern of initial training, the questions moved to in-service training. The aim was to find out how the professionals kept abreast of new developments, how any training was organised, and what subjects it covered.

In-service, or post-qualification training is not compulsory for court welfare officers. Solicitors who have recently qualified must attend courses and gain points in order to retain their professional qualification. The most recently qualified solicitor fell within this rule and had to attend about four courses per year to gain the requisite points. One of the solicitors indicated a rule within the firm that all solicitors should attend two training sessions per year. The conciliation service in area 1 had made a policy decision that their fortnightly meetings would be attended as often as possible. There was some confusion in the sample as to how many had to be attended (6-10, 15-18, and 20 meetings per year) perhaps reflecting that the policy was only internal. Where the attendance at training was not compulsory, the professionals all indicated that training was available to them and that they did attend.

The training was organised by a great variety of individuals and organisations in all the three groups of professionals. The solicitors tended to have two methods of training. First, the individual solicitors went to courses organised by outside individuals or bodies, for example the local Solicitors' Family Law Association, the Lord Chancellor's Department, the College of Law, independent conference organizers, academic journals, and the Family Mediation courses. A second

method of organisation was exhibited by the large firms who had enough solicitors to make it cheaper to bring speakers into the firm, for example from the University, to speak on an area of interest to the members of the firm. In this area, many of the sample attended the meetings of the Solicitors' Family Law Society, which had a local group. This tended to meet on a monthly basis, with speakers on a variety of subjects speaking for a short time before an informal discussion.

The court welfare office adopted a three-tier system. The local office could arrange training for the officers in the team, from local individuals, for example a solicitor or academic; at a second level, there was a regional "Staff Development Office" which organised various courses; and at a third level, the officers could attend national conferences and courses arranged outside the service. The number of courses and especially the availability of outside courses, depended on a very tight training budget. Each officer could perhaps attend two courses at level two or three per year. The outside courses tended to be organised by the N.S.P.C.C., Children's Society, N.A.C.R.O., or the Tavistock Institute.

The conciliation service tended to rely on training within the service, reflecting a very tight budget, sometimes the conciliators would attend outside courses at their own expense. The service had a "Professional Supervisor" who arranged a training programme within the fortnightly meetings, calling on local professionals and academics. Further to this, there was a quarterly regional meeting with other conciliation services. Outside courses were available from the national conciliation association, amongst others.

In-service training: area 2.

As reported in the first area, solicitors over a certain number of years practice

were not, at the time of the study, required to participate in any in-service training. None of the solicitors in the second area were required to take courses. It was reported by some of the solicitors that the Law Society was in the future to introduce a requirement for in-service training for all solicitors. Whereas in area one, one of the firms of solicitors was able to run in-house training on a compulsory basis as it had a large enough staff, in the second area none of the firms was large enough to provide the training in-house. In one of the firms which had about five working in the matrimonial department, the solicitor organised training on an in-house basis, but this was very informal. Only one of the sample indicated that the training was compulsory, however, in the interview it became clear that this was the emphasis placed on the importance of the training by the individual rather than an external pressure. This solicitor attended three or four courses per year. While in-service training was not compulsory, all the sample were very enthusiastic about it, and attended as many courses as they could given financial and time constraints.

The conciliators in area two largely felt that in-service training was compulsory. Two of the eight conciliators felt that the training was not "compulsory", however this would reflect a valid interpretation of an ethos which one of the conciliators described thus: "you are expected to attend". The two non-compulsory members attended to the same degree on a voluntary basis. The conciliators met in two ways for training: first, in monthly meetings discussing cases and difficulties, and having some external input, and secondly, on specific training days, of which there were two or three per year. They also attended external training courses and conferences.

The court welfare team, while again having no nationally compulsory training programme or requirement, had an ethos which required the court welfare officers attendance at the monthly team training meetings. Further to these

meetings, the members of the team were encouraged to go on national courses and to share the material with the team in the monthly meetings. For those in their first year of specialising in court welfare work, this region organised a two week introductory course. One officer summed up the ethos of this court welfare office: there was a "high commitment to training" and opportunities were "definitely available". Perhaps reflecting the very strong team spirit, the training in this group was the strongest and most coherent in the sample.

In area two, the training within the three groups showed the same characteristics as the first area. Again the choices were largely made by the individuals, subject to the constraints of the budget. The main differences occurred in the degree to which the court welfare team organised its own programme. This was also noticeable in the conciliation service. Again, the solicitors were largely independent, however, in this area there was no Solicitors' Family Law Society group to organize meetings.

The solicitors reported that their courses were organised through a number of different channels. Two of the sample noted that the Law Society organised the training at a local level; two reported that a group of the local firms formed a consortium for their training rather than paying on an individual basis. One used private training firms; one organised a group of child advocates (solicitors, guardians ad litem, and court clerks) to discuss areas around their work. One of the sample used "many different groups"; one was training with the Family Mediation Association and, also, through the local child care panel. The training in the consortium seemed to be on the basis of purchasing standard training packages from a private training firm, and one of the solicitors reflected that it was rather "pre-arranged", and that the individual solicitors could not raise issues pertinent to their practice.

The court welfare office had, as was indicated above, two levels of training. The monthly training days were organised by the training manager, the Senior Probation Officer, and the individual Court Welfare Officers. The training days concentrated on specific topics, and were either led by an outside expert, or by one of the officers. An example, which the author attended concerned "Ethics in Crisis Work". The programme for training stemmed from and was geared around, as the Senior Court Welfare Officer indicated, the team's "own needs". Beyond this regular training, the officers had a limited budget to attend such outside courses as they would find useful. This again depended upon the Officers' own interests; one of the officers, for example, had attended a [County] Association of Family Therapy course which consisted of 12 half-day sessions. The officer would, after attending external courses, be encouraged to report to the wider group at the monthly meetings.

Perhaps reflecting the strong advisory link between the two services in area two, the Conciliators training pattern mirrors that of the Court Welfare Office. The Conciliators monthly meetings are on specific issues of practice, and are devised by a training consultant and the service's training committee. There was some indication that the N.F.C.C. had organised regional courses and training, however, due to the rules concerning the necessity for conciliators to have social work training, the service in area two broke away from the national body and therefore its training. Having indicated this, the service in area one only saw the regional training as an occasional meeting with other conciliators. It was noted that the in-service training was solely in-house, and none of the conciliators mentioned outside courses, perhaps reflecting the very limited budget which the service suffered.

Teaching method.

In area one, the methods used in the in-service training were reported to have great variety, and this contributed to the enthusiasm with which the professionals held the training. All the sample in area one reported that they had attended both formal and informal lectures and seminars. The conciliators and court welfare teams were well acquainted with rôle play, whereas this was only reported by 3 of the 7 area one solicitors; two other solicitors had learned through rôle play in courses on Family Mediation and assertiveness. Other teaching methods included regular discussions of cases within the conciliation team and in the court welfare office, and one of the conciliators had found observing family proceedings in court useful. The court welfare team showed the most variety, attending workshops, using packaged materials and case studies, and videos. The solicitors seemed inclined towards the lecture or seminar style to gain information rather than technique.

In area two the solicitors again showed signs that they were more accustomed to lectures and, perhaps, seminars than rôle playing and other methods. The solicitor involved with the Family Mediation referred, as was the case in area one, to workshops; one other had used rôle play. This perhaps reflected that the type of course was essentially law-centred. One of the solicitors noted that the formal courses tended to entail lectures, whereas the local courses organised by the solicitors themselves tended towards seminars and workshops.

The area two Conciliation service reportedly used a mixture of lectures, seminars, and rôle playing. Two of the conciliators referred to "group work", which, as became clear in the interview, referred to the method of case presentation and discussion used in the training sessions: a pair of the conciliators would present to the group one of their difficult cases, and the issues arising from that would

be discussed. The Court Welfare team also used all three methods of lectures, seminars, and rôle play. Further, they used videos and experimental exercises. The Senior Court Welfare Officer referred to the wide ranging teaching methods as "experiential learning", which another officer described as "participative learning". There was also an emphasis on learning "how to get to know" information.

Content.

The content of the courses reported by the first area was very largely led from the perceived needs of the individual professionals. Thus, the in-house training was on issues requested by the professionals, and the selection of, and attendance at, courses was by a free choice, depending on the availability of finance. The areas of perceived interest to the three groups reflected the different approaches they held, and duties they had, in the separation process.

In area one, the conciliators reported that they had had some training on the Children Act 1989, no work on psychology, one had attended courses on counselling - although the supervisor was keen to point out that conciliation is not counselling - and some "academic input" on social work methods, although most frequently on conciliation skills. These courses covered issues of facilitating discussions around practical problems, or, as another conciliator described it: encouraging a dialogue, an opportunity to speak and to listen about specific issues - for example, "access on Friday". Other training had concerned report writing for the full-time conciliator/administrator. One of the sample had attended courses on stress management and on private counselling, although this was not offered directly by the service, and the conciliator offered counselling to individuals in a confidential way, non-prejudicial to the conciliation process. It could be noted, in line with the work of Dingwall and Greatbatch⁵,

that this mixing of rôles could cause an unintentional imbalance of power in the conciliation, as the conciliator adopts a clear rôle in guiding the discussions towards certain outcomes. There is a need for the conciliation to be performed by different individuals to those counselling to avoid a conflict of interests. Another of the conciliators had attended the University of Newcastle conference on the future of conciliation practice in England and Wales.

The court welfare officers all reported attending teaching sessions on the law, and especially the Children Act 1989 - the training for the implementation of which was draining the funds from the general teaching budget. All the sample had also attended courses on psychology, especially relating to the effects of divorce and separation on children. The officers were particularly committed to work on communicating with children and discerning their wishes, and had a great number of sessions both internally and externally on this issue. The teaching was also drawing on their experience of dealing with children experiencing divorce, and allowed them to place this experience in a theoretical framework. This was also a major part of the work undertaken in the area 1 office on counselling skills and social work method. There was no training reported on conciliation skills. Other issues addressed in the teaching concerned guardianship, wardship, sexual abuse, adoption, and "civil work in the 1990s". The approach was reported to be led very strongly on a "need to know" basis, hence the weight given to communicating with children, which was perceived as the central issue at the time of the research.

The solicitors in area 1 mainly attended teaching sessions on the law. All the solicitors attended these sessions, and saw them as an opportunity to gain the requisite knowledge of the new provisions in the most efficient way. The firm of which one of the sample was a partner had had some training on interviewing style from a psychologist; two others had undergone the Family Mediation

training and had done some work on counselling skills. The stress was on technical training rather than skills training. The skills were very much seen as attainable "on-the job". Again the budget for training was very tight, and the choice was left to the solicitors from a very wide set of options.

In area two, the solicitors displayed a very similar pattern to those in area one. The all reported that they attended courses to gain knowledge of changes in the law. This was at a purely factual level. Of the sample only two stopped at that point. One of the remainder had had attended some sessions on social work issues, and reported that courses on psychology were unavailable. Another had some training in counselling skills, and reported that the "whole job's a day to day psychology job". The courses attended, however, were largely to become familiar with changes in the law. Two of the solicitors, through their work on the child care panel, had training opportunities which they created with guardians ad litem and court clerks. This broadened the content of their training to include more social work issues and counselling skills. This was not training in separation issues but in child care and child advocacy; it was influential, however, on their separation work.

In the conciliation service in area two, many of the sample reported that their training covered some work on changes in the law, and some counselling skills. One indicated some work on some social work issues. Further to this, three reported that the training had covered some psychology. beyond these subjects, the conciliators reported a considerable commitment in the training to family work and family therapy. One conciliator reported some work on personal skills, and one reported training in co-working. Another stressed the conciliation skills and methods, while another highlighted some work on child abuse issues, and issues of welfare rights. The overall impression was that the range of the training was very broad, and the individual conciliators responded to different

parts of the training according to their own needs as conciliators and their perceptions of the difficulties they face.

The Court Welfare team in the second area showed a very different approach, in that the training was built around a very strong commitment to co-working in a framework for the work which they had very much developed from family therapy. Thus, while some of the officers reported training on the changes in the law, the remainder of the work related very much to the practice model of family conflict management. All the officers referred to the commitment to family therapy, and the work they had undertaken in developing its practice implications. Some referred to skills in communicating with children; the issue was as great here as in area one. Some officers indicated that the thinking on family therapy also concerned some psychology and counselling skills. One of the officers highlighted mediation skills, another issues in sex abuse (focusing both on the child and the perpetrator). Further elements of practice which were covered in the in-service training were co-working, court presentations, geneograms, [Essentially family trees prepared in the first session by the children of the family: see the description of the session given by Cantwell, above.] and aggression. Again the training covered all these issues and the officers focused on their own needs and interests. It was also stressed by the Senior Court Welfare Officer, that the model was not a geographically universal one, but very much developed in the one office and region. Officers' external conference attendance covered individual interests such as wardship or communicating with children.

Thus, in area two, as in area one, the solicitors concentrated their training on facts, whereas the conciliators and court welfare officers concentrated on skills. It was noticeable in the second area that the conciliators and court welfare officers had a much stronger philosophical underpinning to their practice, and, while it was open to challenge, it gave a coherence and consistency to the work of

the teams. Also it will be noted that in both of these services in area two the conciliators and officers "co-worked", the practice of two professionals working together on each case.

The usefulness of in-service training and the need for greater inter-disciplinary training.

In both areas, all of the sample reported that the training was useful to their work. When asked why, the reasons were varied. Of the conciliators in area one, two felt that it was an opportunity to meet colleagues and discuss work outside the usual group of individuals. One felt that services, especially voluntary services had a tendency to produce isolation: conferences gave time to examine wider issues and encourage a broader perspective at both a national and a local level. Another of the conciliators summed the point up: anything was useful that allowed one to keep up with the current developments, especially new skills of listening, as this was ultimately to the agency's, and the clients', benefit.

The theme which was prevalent in the answers given by the conciliators in area two was the importance of gaining new skills and techniques for their practice, and to share and reinforce existing skills. Further to this, there was a strong feeling that the training was useful as it allowed the conciliators to make better assessments of their own skills and practice, and to "maintain the focus on what we are doing". One of the sample indicated that part of the value was in examining and avoiding assumptions in the work. There was also a feeling that the counselling and conciliation skills could always be improved, and alternatives should be examined. A final set of reasons as to the value of the training centred on building the team spirit. This could be seen through shared responsibility for the training. Training allowed the relationships between co-workers to deepen, and it gave confidence to the conciliators to suggest their own ideas, and to

listen to those of their colleagues.

The reactions amongst the court welfare officers was very similar. In area one, a more sceptical note was heard - the value ultimately depended on the quality of the speakers and contributors, and their teaching skills were very important. One of the sample went further than this, suggesting that the value of the course also depended upon the quality of the people attending, and that this had an element of "pot-luck" as the quality was often unclear from the information sent prior to the courses. This comment had a bearing in the context of the service's stretched training budget. The usefulness was again in terms of the chance to learn new techniques and perspectives on the work. (Here it will be noted that the court welfare team were all very enthusiastic about the work and sessions they had had from a particular psychologist on the issues of communicating with children.) It was also apparent that the in-service teaching was useful in gaining facts about changes, especially in the law.

In area two the response to the value of training was very positive. One officer, however, indicated that training was "sometimes" valuable. Generally, it was noted that in a survey of the court welfare team as to the expectations they had of the rôle of management, the top response was to provide access to training. The reasons for the usefulness were again very diverse, but were consistently expressed throughout the sample, showing the dedication to the team philosophy. Again the central factor was the development of practice skills, and the pooling or sharing of experiences as a resource for all the team. There was a value in the work, in the view of one officer, as it extended the mind into other areas, providing something new. There was also a feeling that the training allowed a cross-fertilization, which gave a standardization, or consistency, in the work of the officers. Further to this, if the officers had similar perceptions and ideas, the morale of the team would be better. There was also a feeling that simply

meeting with colleagues and exploring issues together was a good thing. Beyond these themes, individual officers noted that the programme of training allowed specialist input into their work, and the gap left by initial training was filled, as the practice was placed in a theoretical framework or understanding. The updating of factual knowledge, especially in relation to the expectations of the court and to research in social work practice, was highlighted. Finally, one of the officers felt that part of the usefulness of the training was in showing that families concern individuals who grow and change, and that divorce and separation problems related to that development. There was a general feeling that there was not enough training.

In both areas, the solicitors' comments tended more towards the usefulness of the course in communicating facts - for example the Children Act 1989 changes to the law - rather than techniques. This, was not the universal feeling, however, as, in area one, one solicitor indicated that training offered an opportunity to "get out of the rut" of the daily office routine, while another was very keen to learn new techniques for practice. Another had found courses on counselling skills very useful. It is notable that the last two solicitors were training to become Family Mediators, and the remainder of the sample were happier to express the usefulness in terms of gaining facts. In area two the general feeling was towards the value of training being measured in gaining facts rather than skills. Again two solicitors expressed this view and a view concerning the gaining of skills. Both the solicitors had training with guardians ad litem because of their work on the child care panel, and both expressed a positive need to understand their colleagues different disciplines and working methods in order that they could be better advocates for their clients.

The solicitors were generally more sceptical in their comments as to the usefulness of training *per se*: but, they all suggested that courses were "almost

always useful", or expressions to that effect. It would be speculation, however, to suggest that this supported the observation that the lawyers tended to see the training as fact-gaining; even more so to suggest that this could stem from the lawyers' experience of learning the law, which was perhaps on a more fact-centred, lecture model than the training in social work and conciliation - that lawyers are unfamiliar with the more student-centred methods, and are perhaps reluctant to move from their tradition when undertaking in-service training. It forms, however, an interesting thesis for work in professional education; that the models for in-service training must contain some degree of familiarization with the proposed teaching method, before there can be a common ground in which to explore inter-disciplinary teaching.

Inter-disciplinary learning.

The final question concerning the provision of in-service training sought to explore the desire on the part of the professionals to train together with other related disciplines, and indeed to see which areas the professionals thought would be useful as areas of joint study. This met with differing levels of enthusiasm from the different groups. Of the sample as a whole, in area one nine of the sixteen responded positively to the idea of learning with other disciplines, three did not give an answer on the point, and three felt that further provision was unnecessary. The breakdown by profession showed that all the court welfare officers would welcome a greater degree of inter-disciplinary training, whereas one of the conciliators and two of the solicitors showed a reluctance.

In area two, the response was very similar. In the sample as a whole, 13 of the 21. In the solicitors' group, three felt more inter-disciplinary study would be useful, while three felt it would not. In the conciliators, four of the eight felt that more would be valuable, one felt that it could be arranged, and therefore the

question was inadequate, and three felt that more work would not be useful. All the court welfare officers felt that more inter-disciplinary training would be valuable, although one qualified this by stating that in the current time and financial resources, more training in this area would not be justifiable.

When taken with the supplementary question, the results are very different, and change the complexion of the comments. In area one, two of the conciliators felt that, while inter-disciplinary work was useful, there was probably already enough in conciliation training; one suggested that because the training was perceived-need led, the approach would be as inter-disciplinary as was necessary. The other respondent in the conciliation sample suggested that there was a need for more cross-fertilization. However the examples which accompanied the desire indicated a model of shared learning which gave conciliators *facts* known to the other professions: the desire was to have a better knowledge of the law to allow a better management of claims made about rights (etc) in the conciliation sessions.

In area two, the only one of the conciliators indicated a specific content for further inter-disciplinary training; that more work on bereavement - grief and loss - would be useful. The dominant feeling was that inter-disciplinary study involved conciliators learning from another professional in a teaching rôle, rather than learning skills together.

A similar desire to gain facts from the other disciplines was seen in the court welfare officers of area one. Here, however, there was a desire to see how the same problems of separation were perceived by other professionals. A third model was also seen, namely, a desire to address themes in the work together, and gain *skills*: examples concerned communicating with children and counselling skills.

The court welfare office of area two there was a strong feeling from a small group of the officers that cross-boundary training would be useful, as it was found to be in wardship training, and that there was not enough generally. The others remained vague on the usefulness. It was felt that it could offer an understanding of the other rôles within the system. One of the officers felt that there was a need for more training in family therapy and psychology as the initial training was inadequate on these issues.

The solicitors in area one offered two of the models in the answers. Two saw the current provision as adequate: one felt that courses were available if they were desirable; another, that they could be organised. Two solicitors, however, felt that there would be great benefit in more joint learning around the subjects of psychology, negotiation, and counselling. One of these solicitors identified the biggest problem to encouraging wider training, namely that there is an attitude that one can "never get through the work on a day to day basis", let alone with spending more time in training. This should be read alongside the court welfare officers cry that there is not enough money to extend training programmes, and that training could be taken in the office and not in conferences or externally.

In area two the same models were observed. Either the solicitors did not believe that further training with other professionals would be useful, or they were very enthusiastic towards it. Those who were negative typically saw training as a way of gaining facts and attended only fact based law conferences, occasionally attending a skills based course for lawyers. Another solicitor felt a need to learn more about the welfare system in order to assist the clients. The two solicitors who trained with other disciplines as part of their child care panel work felt that the insights offered from the other disciplines helped their work for the client. One saw it as a way to get to know the other professionals procedures and, therefore, the correct questions to ask; the other saw the two

way exchange influencing the child care work and "rubbing off" on the separation work. Both felt that they could learn more from psychology to inform their practice and to understand the nature of the interaction of client and lawyer. One felt a desire to apply a more conciliation and mediation principles in the legal practice, however, felt stifled that the lawyer is bound to acting for the one side. Again the emphasis was on skills and facts.

It is clear that inter-disciplinary training could be perceived in three ways: learning facts on another discipline, e.g. the law; learning about the work of the other professions in the system; learning new disciplines together with all the professions in the system, e.g. the three teams joining together for workshops on psychological issues and understandings in separation. From the research, it is clear that the first and second models are accepted and used to some extent, however, there is very little learning about the issues in separation on a system-wide, inter-agency basis.

Comment.

What is clear from the training questions is that there is a perception that training is good of itself, however, this is perceived very much within traditional boundaries of working. Further, it is clear that while it is limited in terms of the money available to the individual professional, there is a not-insubstantial amount of money being spent on training by the three groups, whether that be inside or outside the services. The major, current spending is in the precious commodity of *time*. A third factor which is apparent is that there is no coherent syllabus for the training once the initial training is completed: there is a total freedom granted on qualification, and a feeling that learning can and should be directed as the professional discerns a need. Perhaps the final point is the most illusive. The work is largely without central control, as has

already been observed, and that could reflect the fact that the work is at a "cutting edge", and, therefore, prescription cannot reflect need; the syllabus is not set as the methods are developed on a daily basis. Further, it seems to be assumed that once a practising certificate is gained, then prescription encroaches on the professionalism of the individual. An additional factor is that a more coherent training scheme would cost money, but would have the starting point of the monies and time already allocated to training.

The obverse of these observations is that, as admitted by the professionals, the initial training, does not give an adequate knowledge for practice. Further training depends upon the inclination of the professional: the conciliator and courtwelfare officers are allocated, and yet, as Davis (1988) identifies there is a reluctance on the part of the client to change as between solicitors - the choice of professionals could be seen almost as a lottery. Yet, the principle guiding the process is the child's welfare. This would indicate that training should follow a coherent pattern for all practitioners. Further, it would seem at the very least a matter of efficiency that piecemeal courses, often at grossly inflated prices, should make way for training which identifies facts and skills, and is provided at local, regional and national level, both to separate and joint groups of professionals. This would allow the benefits of shared experience, new skills, and shared costs. The difficulty would of course be the content of the course. This, it is submitted, would be a matter for a joint education board between the professions in separation law. This would simply extend the control held over what should be contained in initial training to in-service training. It should be a broad church, facilitating a forum within which both orthodox and unorthodox ideas can be brought to the attention of all practitioners, so that the debate of the meaning of good practice can become central to the local communities of separation practitioners. Thus, the board should set down minimum training requirements between all the practitioners, and ensure the

provision of training; the practitioners would then be free to engage in the debate concerning practice, and indeed the ownership of that debate within a coherent framework created through their own professional bodies.

What skills are important in your job?

The final question of the first part of the questionnaire concerned the skills which the professional perceived to be central to their work. It was designed to act as a simple way of seeing if the training related to the needs of the job. However, it often became an opportunity to discuss and describe the nature of the work and the skills involved.

In area one, the conciliators indicated that the philosophy of conciliation is very much that the children must be provided for at the end of a "completed marriage". Children are not the only individuals involved - parents are people as well, and the child's happiness is largely found through the parents. Therefore, conciliation is a practical and realistic response for solving practical problems: enabling people to see and examine problems and solutions, trying possibilities and evaluating the results. The central job of conciliation is to facilitate discussion, encouraging agreement on practical decisions wherever possible: to enable the clients to work together. There was a feeling that there has to be a realism about the possibilities of conciliation, as the resource is not unlimited. Therefore there was a need to maintain the discussion on rails heading for specific issues - practical problems. This was expressed as "helping entrenched couples to climb out and look at things in a different way".

The conciliators expressed the view that their skills concern chairing meetings and facilitating discussions where this is a problem; giving a fair opportunity for each to speak and to listen to what is said. This entails both keeping a

balance between the parties, and impartiality on the part of the conciliator. One of the skills noted was the ability to react to the situation as it develops, as parents have very different needs, both between different couples and between the parties. "Listening skills" were placed in all the respondents replies. One of the sample felt that part of the skill involved empathy with the couple, and a more relaxed attitude to the problems, with the aim of "getting people round to a rational talking point and helping people to be realistic in what they decide". Another felt that reporting skills were vital to convey the true feeling of a conciliation's conclusion - or stages - to other professionals in a constructive light, yet maintaining confidentiality.

The feeling was very much that the skills concerned changing the nature of relationships from a closed emotional experience to a practical concern for the future. With aims and perceptions such as these, perhaps the findings of Dingwall and Greatbatch are more easily understood. [see above p.¹⁷⁰~~000~~] There was a feeling that the children's needs are not necessarily at the forefront of the parents' concerns for the future, indeed that their needs had been lost or were never really understood. There was thus a feeling that the first stop in a separation journey should be conciliation, to allow these missing perceptions of the problems to be addressed before the couple joined the lawyers' "treadmill".

The fact that conciliation was concerned with practical problems rather than counselling was again stressed. One of the conciliators explained the difference, as it was perceived within the service. Counselling was engaged in helping parents to explore the background of the situation, and the situation which they found themselves to be in. It was much less directive than conciliation: it was not bound to the "rails" of finding answers to practical problems but could address deeper issues. It was concerned with taking people to a point where they could look to the future, to get them through the separation. It was felt by this same

conciliator that there was not enough divorce counselling available. That there was a definite need, as separation concerned failure and negative images causing people to be upset and ashamed by what had happened. Generally, while it was accepted that counselling could help sometimes, there was a more robust attitude that conciliation was a sufficient and practical use of resources. Counselling was perceived to be a luxury by the majority of the professionals in both areas.

In area two, the conciliators assessed the skills needed for their work under two broad categories: skills in the mechanics of conciliation, or skills of communication with the client. Under the first head, the skills comprised writing reports of the conciliation for the other professionals, relating to the other conciliators in co-working groups and case planning, a sense of humour, and an open-mindedness. Further skills included an ability to remain in control of the situation and to be assertive within sessions if necessary. There was a need to explaining much of the process, especially in the early stages of the conciliation, and also a skill in knowing where to pitch questions. There was a skill in paraphrasing the discussion, or rephrasing the dialogue to facilitate the exchange of views. There was a need to care without becoming emotionally involved.

The second group of answers - those relating to communicating with the clients - centred around developing a contact with the parents; an ability to relate to them and to understand their needs. This was tempered by the duty to remain unbiased or neutral; to empower the parents equally, and to be non-judgemental. The skills were those of the family work model, in the view of one of the conciliators. Another felt one of the skills needed lay in counselling abilities. The impartiality referred to above was linked by many of the conciliators to acceptance of or empathy with the clients. The assessment of the needs of the situation had to be made - to assess how the individuals relate to one another

(their body language and where they sit etc.) - and this had to include an assessment of the clients problems. This had to be accompanied by "an ability to convey understanding and empathy to make the clients feel accepted". Empathy was shown by reinforcing statements and reflecting feelings, and by attempting to sustain the couple in working through intense emotions (a "cathartic effect"). Part of the skill of showing an empathy related to the skill of confrontation - showing the individual the "painful realities of attitudes and beliefs". One of the conciliators suggested that part of the job was to reflect reality for the parents.

In this second set of skills, one could note that many appear to concern the conciliator's ability in perceiving the needs of the clients and managing the direction of the conciliation. It could be said that part of the perception of the skills needed in the job concerned questions of value judgement and objectivity, for example in words such as "reinforcing", "reflecting", "painful realities", indeed, even "empathy" and "assessment".

The Court Welfare Officers of area one indicated that the job had two parts: helping individuals to reach decisions, and reporting to the courts. The skills which were felt to be necessary, therefore, reflected this. On the one hand skills concerning interviewing could be seen to refer to the job of reporting to the court, the need to interview in a style which encouraged the individuals to make decisions was also stressed. Thus, patience was a necessary skill. Further, counselling and mediation skills were required, setting an environment to which the couple could return if arrangements did not work out. Listening was again a central skill, as was the speciality skill of communicating with children. Alongside these facilitating skills, it was felt that ability to deal with anger and conflict was important, and frankness was needed.

These above skills largely concern the issue of helping the parents to talk to each other and make decisions. In the event that this was not possible, the officers needed skills concerned with reporting. These were again communication skills. There was a skill needed to write reports and present oneself in court. It was felt that conciseness was a premium. Further, skills in relating to other professionals and colleagues were necessary. Two of the officers in the study had moved towards co-working, the others still concentrated on attempting to let the couples decide their own solutions while the officers were gaining information to prepare a report for the court. Alongside communication skills, the officers felt they needed detachment or objectivity, and skills in assessing the situation and needs of the child. Legal knowledge was required, as was an ability to manage stress. It was felt that the skills were learnt on the job, and that confidence came from practice.

In area two, the court welfare officers reported a variety of skills, either relating to family therapy, or reporting to court. The model employed by the officers was to assess the report for the court within the context of a family centred attempt to find practical solutions to issues such as the custody of the children or access. Skills for the former concentrated on communication: "an ability to make sense of the family relationship and to engage with conflict and emotion" within the context of the pressures placed on the family group by other individuals. There was a need to handle conflict sensitively and impartially - "not to be drawn in" - and to facilitate an interaction between the parties in the meetings. This process required the officer to examine and acknowledge his or her own assumptions. The aim was to enable the parents to move on from the place they had reached on coming to the court welfare service. Part of this skill relates to listening and to being constructive in the phrasing of questions, and in the language used throughout the process.

A very large part of the skills in communicating related to work with children. The need to be able to develop a relationship with a child and gain his or her confidence was crucial in uncovering the child's perceptions of the difficulties. The balance had to be found between gaining the child's trust to enter into confidences, but on the other hand to allow that confidentiality to include the sessions with the whole family, and if necessary the court, without betraying that child's trust.

Issues of communication were central to the reporting stage. The positive attitude to the situation had to be taken through into the report and especially in cross-examination in court, as language could become a weapon. Further skills in reporting were reported to be common sense and an ability to improvise and adapt one's approach to the situation which arose. Co-working skills related to the ability to interview and to observe and suggest new approaches. The approach of the court welfare officers in area two was pressing firmly on towards a family therapy model of mediation, out of which a report could be made by another officer if the therapy failed. Skills in negotiating with clients and with other professionals and agencies were also very important.

The solicitors of area one indicated that legal knowledge and experience was of primary importance. Beyond this, skills surrounding negotiation were very important. It was pointed out that letter writing was one of the most important of these skills as it set the tone of much of the process. One solicitor indicated that negotiation concerned an ability to speak to the client and the "other side". Persuasion was the term used by another. A positive manner was necessary, alongside an ability to communicate with the individuals: an approachability. It was felt that there were no right or wrong answers, but what was sought was an agreement about the children's futures. This meant that the abilities included an intuition of how a court would react to a set of circumstances.

In area two, very similar views emerged. Again legal knowledge was central. However, two types of solicitor appeared: one who saw the rôle as essentially advising the client and presenting the case should the issue come to court - leaving conciliation (etc.) to those professionals trained in it; and a form of therapist-solicitor. Where the solicitor was much more keen to conciliate and counsel with the client. In both cases negotiation skills were at a premium, including telephone negotiation, and administrative skills. The intention was to bring common sense to bear on a situation, in the first model, and the child's welfare in the second. The difficulty identified in the second model was in the relationship between lawyer and client as agent or therapist - how far could a lawyer legitimately define the morality of a situation? A secondary difficulty emerged in defining the child's interests.

Further skills common to the two types of solicitor comprised the following: clear thinking, patience, an ability to focus on the relevant facts, an ability to cope with the workload, and common sense.

Comment.

There were two overwhelming indications from the skills and training questions: that the professional concern is in encouraging agreement between the parties, and as the last resort presenting the situation to a court for its ruling on the circumstances; and stemming from that, that the system and work of separation concerns practical issues rather than the state of mind - hence the negotiations precisely that, and does not concern counselling.

The "social work" model could be seen in all the professions in the sample. It was a desire to stop the bitterness and gain an agreement. It was very much a response to the feeling of powerlessness in trying to stop the destructive nature of the

adversarial process. This could be identified as its central problem - the movement stemmed from a knowledge that something is wrong and that it had to be changed. It lacked, however, any coherent theory, and could be seen as a very lawyer centred problem solving. As one of the solicitors indicated when pressed on what was meant by the need for counselling skills: "well it is advice rather than counselling". Clearly there is a lawyer rôle in advising the parent on the law and its implication, however, the question arises, much in the line of Dingwall and Greatbatch's work: how far are the decisions being imposed on the couples by professionals without the legitimacy and safeguards of the court. In terms of the question posed above, the initial training does not give a coherent view of the parameters of the job, as all the sample indicated that learning comes from doing, and the in-service training depends on the perceived needs of the professional and not an academic appraisal of the need, for example, to address power issues in the couple's relationship, or the couple's ownership of the process and outcome. Thus, questions of the relationship between the professional, the client, and the court do not seem to be addressed in the training programmes developed by the professionals: it is very difficult, essentially, for a market to perceive and accept its own problems. Mediation and its protagonists believe that it offers ownership to the couples, how then can they objectively question that belief. The remainder of the survey must address the issue of whether the professionals have, in practice developed an understanding of the child's welfare, and what in practice paramountcy means.

When asked whether they felt trained to examine the child's best interests, two of the solicitors were emphatic that they were not. The issue was at best intuitive if it was found at all. One responded that the firm could usefully employ a social-worker; the other questioned whether it was possible. Generally, it was felt throughout the sample that the child's best interests were not defined in the initial training to become a separation professional, or, indeed, in the on-going

training. The understanding was an issue of experience and intuition.

1. As is indicated in the profile of the service in appendix A.1, the conciliation service in study area two offered a wide range of projects for the family beyond simple conciliation. Not all the conciliators were involved in the other projects, and indeed, the other projects were not strictly conciliation.
2. Davis (1988), pp 85 - 126.
3. See appendix A.2, part 1, question 5.
4. See, for example, the work of Sherr (1986).
5. *Supra*, p¹⁷¹~~000~~.

3.2 THE EMPIRICAL FINDINGS.

B. Your Rôle in Child Custody and Access Disputes.

This section sought to identify a number of basic issues of the process of separation law: who was perceived to be the client?; the duration and stage of the particular professional's involvement in a case; the influence of other professionals on a case; and the method of inter-professional negotiation and contact.

Your Client.

The professionals were asked to identify who their client was in separation law. The choices were parent, child, or any other, whom they were invited to identify. The solicitors were in the clearest position of client and provider. At the time of the study, before the Children Act 1989, children could not apply for orders in their own right. In area one, all the solicitors indicated that one of the parents would always be the client. One solicitor indicated that occasionally both parents would come in an effort to attempt a joint settlement, but, Law Society rules prevented acting in such a way - to avoid a conflict of interests. In such cases one of the parties would have to find another solicitor.

In the responses, two feelings were expressed. Either, the solicitor felt that the instruction was to act for the parent, or, the solicitor felt that in some way although the instruction was by a parent, the child was a hidden client. The first point is not only pragmatic - the parent is paying for the service - but it

reflects the philosophy that the child's welfare is safeguarded by the courts and court welfare officers. In the latter, the fact that the child is not a direct client is acknowledged; the interpretation reflects an understanding of the duty. In area one only one solicitor could be placed at either pole. As one solicitor indicated: "It has to be more sophisticated than who is your client". Thus, the remaining five fell along the spectrum.

The dilemma for the solicitor is expressed thus: on the one hand there is no choice, the instruction and professional etiquette creates a duty to the client; on the other hand, however, the child's best interests - the statutory requirement for the courts - creates a duty to the child, to act in his or her welfare. This balance was described in different ways. Closer to the child's welfare interpretation, one solicitor described the duty as producing a guidance for the advice given to a client; it became a "filter for the instructions in advising the client". However, with this the balance was described by others as a "compromise" between the two interests of client and of child. It was also noted that the best interests of the child were a matter for the judgement of the solicitor during the negotiation stages of a case, and then the matter passed to the court. The remaining four solicitors all moved very much closer to the other pole: the client is he or she who instructs.

The conciliators in area one showed three different approaches, largely based around the same dilemma as was expressed by the solicitors. One conciliator indicated that both of the parents were referred to the service. However, it was felt that the child "hovers in the background". The parents bring the issues ("problems") of the child to the conciliation. This conciliator noted that the child was very rarely seen. The second conciliator felt that the client was first the child, and then the parents second. Under the heading "other", this conciliator noted that the grandparents, while they were not clients, were often

very important in the process of the separation and the upbringing of the child. Often grandparents became excluded from the issues of access, and in other cases the children lived with the grandparents. The third conciliator felt that the client was equally the child and the parents, as the conciliation was family centred. This conciliator saw the children where it was appropriate to the conciliation process. It was also noted by this conciliator that the process depended upon both parents attending sessions.

The court welfare officers displayed another element. So far the dilemma has been the relationship between the interests of the parents, who control the separation of the family, and those of the child, and the dilemma has been experienced by those professionals invited to act for and by the parents. The court welfare team indicated that their client is technically the court. It is the court which instructs the officer to prepare and present a report. The question again arose, though, to whom the duty was owed. The first officer presented the orthodox, technical answer that the client was the court. All the others presented a more sophisticated answer which reflected the feeling of conflicting duties.

The second officer felt that the court was the official client, whereas the child was the unofficial client. This officer felt a personal motivation towards the child, and that this motivation was shared by the court and the process by this point in a separation. The third officer expressed similar feelings, placing the clients in order of preference as first the child, second the parent, and third the court. This officer felt that, by the nature of the investigation, the parents got more attention, but the aim was to deal with their attitudes to the children. The fourth officer felt that the duty was to the child, and that the family was the client. The last officer indicated that the clients were jointly the court and the child; the parents were represented by the solicitor, the duty was to report to the court the needs and wishes of the child.

The solicitors in area two all indicated that the parent was the client. Only one directly indicated that the parent's rights as a client should be tempered by the child's interests. Another of the solicitors indicated that the interests of the child have to be a part of the consideration in acting for a parent. The example was given that a father may wish to gain custody of the child. This would entail showing the mother in a very poor light. This would not be in the child's interests, and so the advice would reflect this. The solicitor indicated, as did many of the sample who spoke of the need to advise the clients of the child's interests, that if the parent is belligerent and disagrees with the stance of the solicitor, then he or she will simply find another solicitor who will argue in the required manner. A further comment was made by one of the solicitors, concerning the client's attitude. It was felt that there was a great deal more bitterness in the client where the issue of the separation concerned adultery, or a general change of life-style in mid-life, or where the separation had occurred and financial problems had started to occur. This relationship between bitterness (or hurt caused by the circumstances of the separation) was often noted with reference to the attitude towards the arrangements for the child.

The conciliators in the second area all felt that the parents were the clients, and five of the sample linked the parents and the child together as the client. This very much reflects the ethos in conciliation of facilitating the parents to reach a decision for the future of the child, whilst maintaining a focus on the practical needs of the child.

The court welfare team in area two showed, as in area one, that the issue of the identity of the client is open for debate in the service. Indeed, it was noted that this was often part of the team's theoretical discussion. The court has a clear rôle of client in the traditional sense, and this was reflected in the answers, all the officers referring to it as the primary client except one who saw

the only client as the child. The duty to the court was often expressed as one of seeking out the child's best interests for the court to use in its deliberations. One of the officers felt very aware of the presence of the court, and that the job involved a negotiation with the court of the child's interests. The officer felt that part of the problem was that the court did not always see the wider context of the problems surrounding the questions of interests, a wider context which often came to light in the family therapy nature of the officer's work. The dilemma was expressed by another officer: "The fundamental nature of the job is assessment for the court, but this begs the question about helping and assisting a change [in the family] if it is possible". The parents were included by two of the officers as third in the line of clients. One explained that part of the job had to be to try to help the parents come to terms with the implications of the outcomes of the separation.

The timing of the professional's involvement.

The next questions concerned at what point in a couple's separation the professional started working and then finished working.

The solicitors in area one indicated that they were involved at all stages of the separation, but were very often involved at the beginning of the change from an internal difficulty dealt with by the parties, to a more radical problem. Indeed, one of the solicitors observed that the first positive steps to use the law often come from the woman and the man is often "gob smacked" as he did not see a problem in the relationship. Some of the sample observed that they often had inquiries from one of the parties as to the implications of seeking legal proceedings. However, this very often led to a legal resolution. This solicitor observed that coming to the law and the legal process was a major trauma, a difficult line to cross. Most people had to build up an emotional energy about the

relationship's difficulties to launch them into the solicitor's office. Once there, the implication was that divorce, and other orders, were needed. Thus, for this solicitor, the first hour's interview was by far the worst, as it involved setting up a number of sign posts and essentially asking the client to either cross the line towards a formal separation, or continue to work in the current arrangements.

This trauma of coming to the separation process also reflected the comments concerning the legal requirement in the Matrimonial Causes Act 1973, section 6, in divorce to explore the question of reconciliation. The solicitors felt that the very act of coming to the law indicated a dire point in the relationship and that the end of that relationship was desired: the parties were not flippant about separation, and the discussion was usually met with the reply that the parties would not be in a solicitor's office if reconciliation was a possibility.

Another solicitor expressed the starting point of the involvement thus: "Usually when direct negotiations between the parties has broken down". Another indicated that this could be brought on by a change in circumstances, either causing an initial break-up, or triggering a problem with previous separation arrangements. The feeling was reflected by one of the sample who felt the separation was like a "long running sore" and that the process was made easier for the solicitors if the split between the parties was dramatic, making a strong desire for a clear goal.

The point at which the solicitors finished the case was less clearly defined. One of the sample gave the orthodox answer, that the rôle finishes when the instructions are terminated or the case reaches a conclusion. The remainder of the sample indicated that for some cases this would be the court order, but a number of the cases would continue to return to the solicitor when the court ordered arrangements broke down. This might not require a further court hearing, but it

did take up a large amount of time in negotiating details of access visits (especially linked with financial arrangements) between them and the other side's solicitor. They all thought the case has a natural cut off point - not necessarily signifying an agreement or working together between the parties - when the child reaches the age when it can "vote with his or her feet" and chose who to live with or whether to have access visits. This occurred usually at about 15 or 16 years. Before that, the parents could continue to return to the solicitor at every problem. One of the sample suggested that some parents could not make sense of the change to being parents, rather than partners who continued to fight. Others observed that there could be an apparent initial success in the court orders, but then problems could reappear if one of the parties found a new partner, and the parents would return to the solicitors. A further end to the arguments could occur if one of the parents simply "ran out of steam" for the fight: it was felt that the bitterness, both to the ex-partner and the law, did not go.

The conciliators in area one reported a much more defined involvement. The bulk of the clients came to conciliation after they had separated, and on the suggestion or instruction of their solicitor (one of the conciliators placed this number at about 70% of the clients). The remainder were either self-referrals, or the courts had developed a tendency to instruct that some couples go for conciliation. If self-referred they came either through advertising in the media or by the recommendation of friends, and this could be before or after the couple had decided to separate; There was a feeling from one of the conciliators that the point at which the couples came to conciliation was too late, and that an earlier referral would allow for a more counselling or therapy based process.

The sample reported that the conciliation ended either when the specific issue brought for conciliation had an agreed solution, or when it was clear that such a solution would not be found. Thus, unlike the solicitors, once the process had

failed, the clients tended to take the initiative and leave the process. The conciliators could only act when both the parties attended the sessions. It was stressed that the focus of the sessions was the particular set of practical problems - for example the access to the child - which the parents brought to the sessions. The sessions did not concern deeper relationship issues, for example the question of reconciliation.

The senior welfare officers in area two indicated the nature of the rôle of the court welfare officer began with a clear instruction from the court to prepare a report on a couple who were seeking a particular order. This rôle was defined in statute and, while the courts in different areas made policy decisions as to when to order reports - for example some areas ordered most child cases to have a report while in others a case for a report had to be shown - there was no other point at which the welfare officers could become involved. Indeed, any self-referrals were sent to the conciliation service. Most of the reports are effectively requested within six months of the couple's final separation.

The response to the point at which the contact finishes was very similar to that of the solicitor. The statutory point at which the court welfare officer's job ends is when the court order is made. In area one, however, the officers had an informal philosophy of allowing the parents to return if the arrangements broke down. Only a minority of parents returned, usually alone, and often simply to clear the air. There was a feeling that it may be easier to talk to a welfare officer than a solicitor. This may be the case for some parents. However, the solicitors' responses indicated that a large number of their clients return for advice after a court order. The philosophy of the court welfare officers was a part of the general tendency in some parts of the service to see the rôle as one of facilitating the parents' own agreement about the children. This was again recognised as a tension within the service; indeed the availability of the

self-referral of parents after an order depended on the officer's philosophy of his or her job and, more importantly for most, the officer's workload.

In area two the solicitors' responses were very similar to their colleagues in area one. For the majority, the solicitor was the first point of contact with the formal separation process. Some people had already separated, and the first need would be some sort of financial support, or perhaps one of the parties had not had access for some time. One of the sample indicated that the start of the case largely depended upon the couple's communication skills. If the couples could not talk to each other then the contact with the solicitor would be after the first argument. Others would see solicitors half-way through the separation, and at the other extreme, some would come to solicitors having worked the whole issue through, knowing the situation they wanted to achieve by using the law. The latter was rare.

As to when the involvement finished the response was the same as the area one solicitors. Very often the involvement never seemed to reach a conclusion. The two possible points at which some finality was achieved were again indicated: either the child leaves the influence of the parent - e.g. leaves education -, or one of the parties "gives up". Another terminating factor was raised in this sample but not in area one. One solicitor indicated that an end may be forced on the solicitor when the Legal Aid allowance runs out.

In area two, the conciliators showed very similar responses to those in area one. There were two differences, however: parents seemed to come to this service at any stage of the separation, sometimes many years after a final court hearing, and some couples came at a very early stage to discuss the implications of separating. The vast majority, however, used the service on the advice of their solicitors once they had started the process and before a court hearing.

The point at which the conciliation process ends was again similar to area one's responses. The sample indicated that the end could come when a settlement was reached, when the parents felt able to make their own agreements, when the conciliators felt that they could no longer offer any help, or when one or both of the parties did not attend sessions anymore. It was apparent that there were a small number of couples who had another attempt at conciliation when they found that the orders of the court were not satisfactory. It was equally apparent, however, that conciliation only works for a certain type of couple, and they are a minority both of the divorcing population, and of the population experiencing post-separation difficulties. A number of parents who start conciliation leave without finding a solution; a number find the solution does not work and do not return; and yet more do not attend conciliation in the first place.

The court welfare officers in area two gave very similar answers to those in area one. The initial involvement came from the court's request. This was usually between the stage of decree nisi and decree absolute, although it could be in unmarried proceedings in the magistrates' court, or in ancillary proceedings before the divorce.

The end of the officers' involvement in this area was perhaps more clearly defined, as the open door principle for post-report referrals was discouraged due to the pressure of work and the clients were referred to the conciliation service (perhaps accounting for the difference between area one and two's conciliation responses). One of the officers, however, indicated that the majority went back to their solicitors. The contact with the court welfare office could be maintained, in some instances, if the court ordered a supervision order or supervised access.

Comment.

It can be seen that while the conciliators have a largely defined rôle, the court welfare team in area one and, more often, the solicitors have cases which run on long after the court orders a settlement. This was identified originally in relation to the number of cases a solicitor has at any one time. One could conclude from these findings perhaps two things. First, the process of conciliation only works for some parents; those who are disposed to talking through issues can make the most of conciliation which effectively gives a neutral arena for such parents to discuss practical arrangements for the children. If this was not the case, and it could work for all parents, then one could presume that on new difficulties, the parents would return to the neutral arena and discuss why the arrangements failed and how new ones could work. This does not seem to be the case.

Secondly, it is apparent that the orders of the court do not necessarily herald an end of the difficulties. Indeed, the sample indicated that the difficulties go on throughout the child's life in a substantial number of the cases. It is also alarming that one of the points at which the process ends is when one of the parents gives up. This links to the statistics which indicate a loss of contact between the child and one of his or her parents in so many separation cases. Perhaps the obvious conclusion which can be drawn from the responses to the simple question of when does the professional's involvement finish, is that the law - or at least the orders of the court and the court process - does not give a solution to the problems of separation for a large number of the families.

The reason for this can be seen in the feelings expressed by many of the sample: that separation concerns communication, and the success of arrangements requires communication and compromise. Unfortunately many of the parents are not able

to meet these requirements. The marriage has failed because of the break down in communication and compromise, and the negotiated peace fails for the same reasons. Thus, the intention to create a law which prescribes the arrangements for the future of the child does not work for many families, and likewise, the intention to create arrangements for the turbulent post-separation period before the parents can regain the joint responsibility for deciding their child's arrangements also fails. The failure of the response made by the legal and negotiation process to the separate problems is seen in the number of the parents returning to fight the issues they sought to resolve initially in the courts or in the separation process. The failure only relates to a small proportion of the separating population. However, most people will know someone for whom separation not only ended their marriage, but also radically altered their child's parental relationships, and indeed is emotionally scarred by the experience.

The interaction of the professionals.

The remaining questions in this part concerned how the professionals relate to one another. The first two concerned how the information given by other professionals influenced the work of the respondent, and the second pair concerned the mechanics of the involvement, including whether case conferences were used to bring the parties to a negotiating table prior to the court, as in care proceedings.

There was a generally positive view of the influence of the other professionals. The conciliators in area one indicated that many of the clients had seen solicitors, and some had seen the court welfare team or the court. Some had also seen their G.P. with stress symptoms. As to the differences which could be seen, the evidence did not show a distinction between the views and preconceptions held by the clients and those instilled by the professionals, and therefore

comment cannot be drawn usefully from the questions. Generally it was felt that most solicitors gave positive advice about the conciliation service, although some of the clients displayed prejudice against the process, and many showed a lack or knowledge about the process. One indication of the perception of the conciliators of their relationship with other professionals in the mind of the certain clients was that conciliators advice was somehow below that of the solicitors'. Indeed, the conciliators often referred in their feelings about their place in the system that information told to a client by a solicitor - who was paid for advice and was part of an establishment in separation law - was valued more highly than other professionals' advice.

In area two, again the responses were very similar, despite a feeling that some solicitors may introduce a combative stance and further entrench views. Also the process of discussion with the spouse may be new for the client in the process of separation, and this could take time to get used to. Further, the longer a dispute had been going on, it was felt, the more entrenched and bitter the views were likely to be. There was also a feeling that having seen solicitors the clients had more definite and fixed ideas of what they wanted, making conciliation more difficult. Again it is difficult to tell if this is the fault of the other professionals or the character of clients who first go to solicitors.

The clients of the court welfare office had usually seen both solicitors and the conciliation service, and perhaps doctors and social workers. The feeling of the court welfare team in area one was that the approach of the solicitor could influence the client's approach - as far as they could distinguish the impact of the solicitor from the predisposition of the client. What was clear was that some clients, who went to the more adversarial rather than conciliatory lawyers, tended to display a more belligerent attitude. Also those who had gone to conciliation, which had therefore failed to bring about agreement, as a court order was sought,

also displayed entrenched views. It was felt that the influence depended upon individual characteristics rather than profession. Usually the professionals shared information and "suspended judgement".

The court welfare officers in area two indicated the same group of professionals who may have been involved. As to their impact on the client, one of the officers indicated that the opinions of the professionals who had gone before were "burned onto the sole" of the client, and the officer was constantly viewed against that mark. Further to this, it was felt that some solicitors' letters were inflammatory to the situation. Another officer indicated the same general belief and then added: "the lawyers in [area two] are very good however"! The lack of knowledge of the process of conciliation or family oriented court welfare work was indicated. This is a matter for general education, and would be helped by more inter-disciplinary study. Another impact on the couple was indicated by one of the sample; it was felt that the families of the couple placed a burden of the "moral" rights and wrongs of the separation on the couple.

The solicitors in area one reported that their clients may have seen Relate, counsellors, doctors, accountants, conciliators, and court welfare officers. There was a feeling that one could not generalize the impact of other professionals on the client as this depended on the individual's characteristics. One of the solicitors indicated that the impact on the case was one of clarity: having received advice from an accountant the financial position was often clearer, or from Relate, the emotional questions were often clearer. Further one of the other solicitors indicated that having seen the court welfare team, the clients were sometimes more conciliatory, and prepared to see the other party as an individual with rights and needs.

The solicitors in area two reported very similar feelings. It was pointed out

again, that conciliation did not mean counselling, and that clients who had been for conciliation may still have issues which could only be resolved in counselling - if they would attend, although very few would. There was a feeling that those who had been to Relate could have a clearer idea of what they want, and what they can realistically hope to achieve.

Generally, it was felt that clients would hear what they wanted to hear of the information offered to them by any of the professionals, and therefore it was largely down to the clients own character as to the impact which would be made by the professionals. It seemed to be the case, however, that each of the professional groups felt that another group had considerable power over the opinions of the client. The solicitors were felt to have a belligerent influence by some of the sample; the conciliators a calming effect by some; and the court welfare team a similar mediating effect, and an ability to make or break a clients case.

The mechanics of inter-professional communication.

The conciliators are, by the nature of their philosophy, the most isolated of the professionals in the process. Essentially, conciliation depends upon confidentiality in the sessions, and therefore they cannot relate any details to the other professionals. The only communication concerning the conciliation, therefore, concerns either the details of a successful agreement, or the fact that the couple has not been able to reach an agreement. The only other contact concerns information about the referral: for example a solicitor or court welfare officer may telephone to ask if the client has been attending conciliation. Further to these principles, one of the conciliators in area one also indicated a willingness to contact other professionals for clarification of information, with the permission of the clients: for example lawyers, teachers, or psychologist.

This conciliator displayed a more assertive or prescriptive stance in the approach to conciliation than the others in the sample, involving the children, and asserting a particular view of the child's interests. The others displayed a more facilitative rôle for the parents discussion. The general conciliation ethic of impartiality was well respected by the other professionals in the area.

The conciliators in area two indicated that their practice was not to communicate with other professionals. Only one of the eight sampled indicated that contact was made with the solicitors, for the purpose of clarification and reporting any agreement.

The court welfare officers in both areas are engaged, if the attempts at conciliation fail, in investigating the child's needs and wishes. Therefore part of the communication is with teachers, health visitors, and any psychologists and social workers involved in the case. After writing the report contact may be made by the solicitor, often by telephone, for clarification of details in the report, and then contact would be made with the solicitors and barristers, face-to-face, in the court. This court meeting would often be in last minute negotiation and the court welfare officer would be an independent professional who the lawyers could call upon to offer ideas in the negotiation, or to approve ideas from the parties. Further clarification of the report would be sought at this stage, probably by the barristers. It was noted that the report is confidential, in as much as it is available to the court, and therefore only to those involved in the court process.

The solicitors in both areas reported that they would be in communication with the other party's solicitor, very often in telephone negotiation, or "haggling", or by letter. There was an increased awareness that the language of the letter was a matter for extreme caution within the negotiation process. Inflammatory communications were of no use either on a personal level between professionals,

or with regard to the clients relationship in the family as a parent. The 'phone was reported to be a major tool in the process of negotiation. One solicitor indicated an average of 40 calls per day, either with clients or with their solicitors. The choice of the medium for communication depended according to another solicitor, to the personality and competence of the solicitor. It was felt that these qualities were crucial to all the process, in relating to the client and other professionals. Some of the solicitors indicated that they would also see the judge in court on a face-to-face basis to discuss possible outcomes to present to the client in negotiation.

Case conferences.

From the reading undertaken in the comparative area of child care work, it was clear that a major part of that process was the case conference, at which all the relevant professionals would meet and discuss the child's future, sometimes with the parents - very often without them - and then form a plan for the child's welfare. Given that so much of the process of separation law concerns negotiation, a question was included to find out if case conferences with all the professionals and the parents occurred, and if so whether they were successful; and if they did not occur, why they were not viewed as desirable.

The conciliators in both areas did not, and would not engage in case conferences because the nature of conciliation was that it was independent of the other negotiation processes. If it was successful then the parents presented their plans to their solicitors, if it was unsuccessful then the chapter of conciliation was closed. The confidentiality of the service depended on its remaining outside the process. The only "case conference" would be a discussion of difficult cases within the conciliation service on an informal basis between colleagues.

A difficulty with the concept of case conferences generally was expressed by one of the conciliators in as much as where control of the conference might lie. It was felt that a client with a weaker solicitor may be impoverished by the conference. In a system depending upon negotiation, it could equally be argued that the power imbalances between the clients and between the professionals would always be crucial to the outcomes and success of the arrangements.

The solicitors indicated in both areas of the study that case conferences were not used to discuss the child related issues. This was essentially a matter for conciliation, and if that failed the process shifted to a preparation of evidence for a court hearing. The negotiation would be in the context of the gathering of evidence. However, in area one, one of the solicitors had used case conferences in custody and access to some useful effect. The parents and the solicitor sat and discussed the issues of custody and access. One of the disadvantages, however, it was admitted, which the solicitors had to be aware of was that one of the parties may feel disadvantaged by the process. Another noted that the conference was sometimes used between the lawyers to deal with issues of finance and property. Both indicated that a great deal of work could be achieved in this situation. "Conferences", for lawyers, it was also noted, referred to the meetings between the client, his or her solicitor and barrister.

It was apparent that the case conference was closer to the repertoire of the conciliatory solicitor, even requiring a commitment to Family Mediation. One solicitor expressed the radical view that a case conference could play host for a "slanging match" refereed by the professionals, to clear the air; conflict was seen as nothing to fear, but a useful part of the process of separation. This was a view also held by the area two court welfare officers.

The court welfare officers in area one indicated that inter-disciplinary case

conferences were not used. One of the officers explained why: the service was impartial, an organ of the court, and to sit round a negotiating table would shift the focus away from the child towards an agreement. Some internal conferences were again undertaken to discuss difficult cases. If the case moved to a care issue, for example if violence was alleged, then there may be care case conferences. This, however, was not the case in custody and access cases. Some of the more conciliatory centred officers felt that the method may be worth trying in custody and access, however, they felt that the solicitors were reluctant.

Solicitors and court welfare offices throughout the sample indicated that they had informal conferences at the court hearing as a last minute attempt to forge an agreement. It was noted that the biggest bar in practice to earlier case conferences was getting the clients to turn up.

Comment.

It was noted in the previous question that the court welfare officers and lawyers are often drawn into "door of the court" discussions and negotiations. Case conferences imply a more relaxed forum, but it could also be said that it implied a forum without a judge. This leads, alongside the question of the conciliator of who would hold the chair in a conference, to a conclusion that perhaps conferences only work with the judge, which is effectively a description of the court hearing. The court hearing, however, is not seen as a discussion by the professionals and parents for the child's welfare, and is seen as a highly unpredictable forum by the solicitors. It was avoided by informal negotiation. It was felt by some of the sample that Family Mediation offered a case conference model of sorts. A conciliator and a lawyer would facilitate a discussion and "thrash out" a settlement between the parties.

This, however, still depends upon a philosophy that the child's welfare stems from any parental agreement, rather than the independent safeguard of the child's best interests which was envisaged in the law. Negotiated settlement is not the same as the parents who visit the solicitor having agreed their own terms. Here the parents are seeking a forum within which they can find an agreement or have an agreement imposed. Thus, part of their surrendering of their right to decide independently of professionals involves a belief that there are objective rules. If the forum which they are offered, or indeed pushed into, depends on negotiated settlements, with solutions being suggested and managed by professionals, the rules are uncertain. There could be seen again, in thinking through the questions of the inter-relationships of the professionals, and the case conference issue in particular, that the acceptance of the negotiated settlement model removes the objective principle of the child's welfare, and replaces it (for all those parents who are not used to debating with middle-class professionals) with the value judgements of the professionals. The adversarial imposition of a settlement, therefore, may not have been removed, but rather it may simply have become hidden by the shift to the paramountcy of negotiation. Thus the crucial issue for the best interests of the child in the negotiated system is the understanding of the term held by the professionals.

Two questions for solicitors.

It was felt that the solicitors should be asked two questions which were not addressed to the rest of the sample, referring to their choice of court for a separation issue, and their use of the conciliation service.

In questions of custody and access which were not part of divorce proceedings, as was noted above, the lawyer has a choice of either using the county court or the magistrates' court. Where they had a choice, the solicitors all preferred to use

the county court. The reasons for the choice of court were interesting. It was generally felt that the county court, requiring everything to be submitted on paper and with its slower process, gave a more civilised process. The magistrates' court was faster and, because issues were not submitted in writing, all manner of accusations could be thrown up in court. Another of the sample suggested that the magistrates' court, with its criminal overtones, was like a "cattle market".

There was also a feeling that the quality of decisions was generally of a higher standard in the county court than the domestic court. It was felt that the process was more standardized in the county court. One of the sample indicated that there was less chance of "barmy decisions". It was felt by one of the sample that the skill of the advocate was a less important factor in the county court.

The county court judge tended to be more robust in what he or she would usually accept in evidence, and, unlike magistrates', would not be afraid to lay down the law. It was one solicitor's opinion that the clients were more likely to accept the homilies of a county court judge than those of a magistrate, and the homilies gave weight to the arrangements. One of the sample gave a contrary view, however, suggesting that speed could sometimes be an advantage in the needs of the child and family, that written evidence became much more stark, and that the Legal Aid Board preferred cases to go through the magistrates' court.

All the sample of solicitors knew of, and advised the clients to attend, the conciliation services. There was a general feeling that either the process was good for all couples, or that it was good for the specific issue of access. Furthermore, all were strongly advised to attend as there was a feeling that it could help to diffuse bitterness. There was also a feeling expressed by some of the solicitors that the chances of success were higher if conciliation was advised for a particular issue. Two feelings about the perception of usefulness were also

observed. Some solicitors felt that conciliation was good for the "hard case", whereas others felt that it only really had effects where the parties were close together and ready to agree with help. This may affect the vigour with which individual solicitors suggest or pursue the need to attend conciliation.

3.2 THE EMPIRICAL FINDINGS.

C. *Type of Client.*

This section of the work related to the professionals' perceptions of their clients. It sought to establish further information about the conduct of the process, and information about any perceived link between social class, age, and attitudes in the client.

The normal conduct of a dispute.

The first question concerned whether or not there was a normal pattern to the number of interviews which would be conducted in preparing a divorce, a custody issue, and access arrangements. A supplementary question concerned issues causing this to be modified.

In area one, the conciliators showed a difference in the number of sessions which they felt would be a norm - although all were keen to stress that there was no "normal" dispute. One conciliator usually had two sessions, one to clear the air and a second to "get down to brass tacks". The second had between three and five sessions, holding a joint session, then perhaps a session with each client alone, and then joint sessions. This conciliator was much more prescriptive in the understanding of conciliation. The third conciliator responding to the question indicated that there was no norm and different couples might have between one and five or six sessions, perhaps spread out over a one year period.

The approach would be modified for the first conciliator if the couple needed more time to discuss issues, or if the situation was particularly stressful, requiring a slower pace. Another change might occur if the clients needed to be seen separately, or if extra subject matter was brought to the sessions. The second and third conciliators explained that changes were led by the clients. The second indicated that the number was dictated by the clients need, or to help the clients see that the "decisions are dynamic" - changing with circumstances. The third conciliator felt that some clients wanted to use the service to monitor the arrangements over time, in the neutral setting of the service. Others only needed one visit to act as a catalyst for their own communication - an opportunity to say things "it was not safe to say before" on the neutral ground of the service, and thus clear the air.

In area two, the conciliators showed a more consistent norm of 2 - 3 sessions in the "normal" case. Fewer indicated that there was no "normal", and only one indicated that usually the process took 4 - 5 sessions. The norm was disrupted, according to the conciliators, by the intransigence of the couple; if the parents were unable to reach an agreement. One of the conciliators felt that the modification occurred where there was an "inability of the clients to communicate, and inability or unwillingness of the clients to accept responsibility for their own lives, or irresponsibility of one parent towards the other". Another simply said that the process had to be modified for "difficult individuals and difficult situations". These responses showed a very interesting perception about the ability of the client to use the forum of conciliation. It has been noted that conciliation speaks of facilitating a dialogue between the parties. Where the parties cannot enter such a dialogue, the conciliators' language places blame with the parents, almost as if there was a wilful desire to frustrate the facilitation. The assumption seemed to be that all could reach an agreement if they tried.

There is a danger of marking the couple, and therefore the family, who cannot reach agreement through conciliation as somehow second class and troublesome. If this is the feeling from the conciliators, there could be greater dangers elsewhere in the process. If this became part of the feeling of the courts - which have already indicated a wholesale acceptance of the principle that conciliation is a good thing - then the moral weight placed on a non-communicating couple could add to their difficulties. The problem could arise, in that the courts do not have the correct tools to deal with the issue of the child's welfare, and conciliation presents a forum which removes the difficult decisions from the court. Thus, the courts may start to see those who require them to make judgements as troublesome cases. This would be hastened by two factors: the case which did not reach a conciliated conclusion will be, by its very nature, a hard case; and the courts will be losing to conciliation the ordinary cases which allow the judges to develop and maintain a knowledge of separation problems. The danger is that this feeling is not a conscious one in the process, but is an unconscious development in the minds of the professionals. This is a matter for close monitoring in future research.

The court welfare team in area one reported that, unlike some other geographical areas outside the study, they did not offer a standard package of x sessions. Here the number of sessions varied according to the needs of the clients, and the style of the officer. Therefore, the officers showed different "normal" numbers of sessions for custody and access cases: one suggested 3, another 3 - 4, the next 4 - 5, and the others suggested that there was no "normal" case. A common ground was that some, although not all, officers would see the parents individually at first; all would then try to see the parents together (although this was not compulsory), then with the children, and then the children alone. Perhaps wider family would also be seen, according to the circumstances. The desire to allow the parents as many opportunities as possible to reach an agreement was continually

stressed.

The pattern was modified by a number of factors. If there were special factors, for example violence in the family, the couple might not be seen together. If the parties showed a possibility that further sessions would result in an agreement, then this would be pursued. If, however, the couple were intractable, the investigation for the report would be made. A further, although not often seen, modification occurred if the parents came to a swift agreement. It was noted by one of the sample that the articulate clients wanted more sessions, even if they did not need them. Another noted that the joint meetings would be more difficult where conciliation had failed.

In area two, the court welfare office displayed a pattern of meetings which was perhaps the most fixed. The team had developed a model using principles of family therapy. If the parents could agree, then there may be no need for a session. However, given the fact that the parents were referred by the court, this was most unlikely. If there was dispute, as one officer explained, then there was usually something in the relationship which caused the dispute: the problem stems from the interaction, according to family therapy. This could be a difficulty; indeed, one of the major criticisms levelled at family therapy is its belief that all the problems stem from the interaction between the family members, and there is no space to accept that this depends on characteristics of the individual: the fault may not always lie in the whole family, but sometimes could be attributable to an individual. The approach of the team allowed for this difficulty in family therapy. In reality the "therapy" only worked if the individuals agreed to it, given the number of sessions available.

The officers indicated a norm of about 3 sessions. A first session would be with the parents and children together. The session would be used to gain information

about the facts and feelings surrounding the family relationships. The children would participate a great deal in this session being encouraged to talk about the family (through indirect means such as pictures and geneograms). Further sessions would be between only the parents . The pattern would be modified if further work would produce an agreement; if it was apparent that no agreement would be reached a report would be prepared for the court, effectively terminating the sessions - the report being made on the first session material. The court might order further investigation. The tension was again indicated between the need to investigate and the desire to effect a change in the arrangements through conciliation or therapy. Further sessions could also be undertaken, subject to the budgetary implication, if the parents invited help for unresolved issues. Also the intensity of the dispute might slow the process down, as communication would be difficult. This largely depended, in the opinion of one of the officers, on the individual's ability to cope with the separation.

The solicitors of area one, reflecting the general tendency that the clients made irregular and informal contact with the solicitor at all stages of the separation, reported that "normal" cases took anything from 4 - 10 and 5 - 6, to "at least 6 - 7", and 5 - 15 sessions. The feeling was that this was very much a starting point of formal interviews where the client was invited to attend. However, the clients were encouraged to report any developments to the solicitors, and therefore there was a great deal of informal contact by telephone, or face-to-face. One solicitor reported that an assistant might be able to deal with some of the calls, but the feeling was that the solicitor had to take most of the interviews directly. It was very interesting to note that all but one of the solicitors found that access disputes entailed far more interviews and energy. The one who reported the opposite view was the "traditional" lawyer.

A major difference in the responses of the solicitors in area one to those of the

other professionals could be seen in many of the responses. In the other services, with the exception of the area two court welfare team, the professionals did not speak much about the emotional content of the separation and the issues surrounding the child: the focus was on finding arrangements. The solicitors spoke about the emotional content of separation, and of the clients need for reassurance and support. One of the solicitors felt very strongly that legal aid provision did not allow solicitors to do a proper job for the client as it only really covered the legal aspects of the case: in privately funded work, the solicitor had time to approach the emotional issues as well as the legal. The area two court welfare officers saw the central issue as the emotion of the separation, however they only had about three sessions within which to attempt to work on the issues - and, of course, their duty was to produce a report for the court. The solicitors did not have a system within which to work on the emotional issues, but saw the clients very regularly concerning the outworking of the emotions.

Indeed, the emotional state of the client was one of the major modifying factors in the deviation from the norm. Where clients had agreed prior to the visit to the solicitor, the case could be dealt with fairly swiftly. Where the clients had emotional problems, the solicitor's involvement became much greater. It was noted by one solicitor, that child cases always took longer than divorces with only financial concerns, because of the heightened emotional content. Another factor in modification was the nature of the allegations made by the parties: if, for example, abuse was alleged the case would take much longer.

In area two, identical responses were made by the solicitors. The average number of formal sessions was between 3 and 10. However this was a norm were there were no normal cases, and beyond the formal sessions the solicitor used both the telephone and letters. One reported that women often needed more help in preparing for a custody hearing as they seemed to feel a real threat that the

judge could take their children away. The obverse of this was that men felt a similar sense of helplessness prior to an access hearing. Again the modifiers concerned the type of emotions involved and the level of conflict, and issues surrounding legal aid, but also in this sample, the complexity of accompanying financial arrangements was felt to influence issues in custody and access.

The age and social group of the client.

By now, the general working patterns of the professionals have been established. Attention then turned to the parents. The professionals saw a variety of parents seeking help with custody and access issues arising out of their separation. The parents were not necessarily married or divorced: many were separating after an un-married relationship. In the preliminary interviews, one of the solicitors indicated that over the course of practice, a trend towards a change in age and social class could be identified. This idea was tested in the thesis, and was expanded to try to identify if the age and social class of the parents was accompanied by a change in attitude to the child's best interests, or whether the attitudes towards the former partner remained the same across both these divisions. These questions, for which the professionals did not keep records, did not produce scientific answers. The questions did, however, raise some interesting points of discussion. The questions could well be pursued in a future study, but incorporating two other crucial cultural factors which were missed in the present study, namely race and religion.¹ The social groups were defined as follows:

Group	I	Professional.
	II	Managerial.
	IIIa	Skilled non-manual.
	IIIb	Skilled manual.
	IV	Semi-skimmed manual.
	V	Unskilled manual.
	VI	Never employed.

The conciliators in area one felt that they saw all social groups, and that the

age of the parents tended to be between 20 and 40, as would be expected. One of the conciliators had worked out an average age over a sample of some 200 clients. The average of the father was 27 years, and of the mother 25. It was pointed out that a sizeable number of the clients, 10% was suggested, are under 20. Usually they are unmarried, and indeed, may not even have lived together, but have issues of custody and, especially, access to deal with. These cases presented very difficult moral dilemmas between the rights of the parents and the rights of the child: to attempt to create a relationship based on perhaps a very short parental relationship, or to allow the mother and child to make a clean break from what was seen as a mistake.

All the conciliators in area one felt that the distribution of age and social group had remained the same over their careers. As to a link between age and social group, most of the conciliators felt that they could not comment as they did not keep the statistics. One, however, had noted that the younger parents tended to be in social groups IV and V. This, it was felt, would fit with a general pattern that the professional and managerial career groups pursued their careers in their early adulthood, and then made a choice to have children later in a relationship, unlike the other social groups who tended towards families at an earlier age.

In area two, the conciliators gave a very similar set of responses to those of area one, although again they did not have the statistics and depended upon subjective feelings for their answers. It was felt that the service had clients from all the social groups. However, some of the conciliators indicated that the majority came from the skilled manual or semi-skilled manual groups (groups IIIb and IV), and that only a few clients came from the professional groups. In terms of age, the natural tendency was seen, in that parents of young children will themselves mostly be young, and the sample indicated that the clients were mainly

between 20 and 40, with some younger clients and a few older parents. The conciliation service was relatively young, and thus the conciliators could not have seen a change in the distribution.

As to the correlation between the age of the clients and their social group, the conciliators generally felt that they had not considered the issue. Some ventured the opinion, as was seen in area one, that the younger clients, perhaps the under 30s, tended to be from groups IV, V, and VI, whereas the older clients, 45 - 60, tended to be professionals.

In area one, the court welfare office again did not have accurate statistics and the answers were impressionistic. The results were very similar to the conciliators. The senior officer tended to see more professionals and managerial clients, so that they formed about 50% of his clientele. This distribution had changed as the opportunity to choose cases became available. The remaining officers all expressed a belief that, while they dealt with all social groups, there were more "working class" clients, and many unemployed clients. Each would have a further block of middle class clients.

The age profile displayed the same characteristics as that expressed by the conciliators. The clients fell within the 20 - 40 age group, although a majority was felt to be between 25 and 35. Of these, it was felt by the officers that the professional group appeared later in the age profile: there were not many middle class people starting families at a young age. A large proportion of the children were under 7 years of age. It was noted by the officers that the younger clients tended to be more difficult, many being unmarried teen-age fathers, who were largely unemployed. The difficulty came both from an increased prevalence of violence, and the fact that there was often a very short and unsettled relationship pattern with which to work. There were a sizeable number of cases

from the magistrates' court with parents aged only about 20 years.

As to a change in the profile, the officers largely felt that the age and social group had remained the same over their careers. In this sample, however, a longer service has already been noted, and there were some feelings that there were more professional group disputes today: previously it was felt that the professionals waited for longer before separating - perhaps when the children were older. Today, while they are older as parents, the children are younger on the break-up of the marriage in this group.

In area two, the court welfare officers again did not keep the relevant statistics, but felt that they saw clients from all the groups. Some of the officers indicated that there were fewer professionals, as they tended to resolve the children issues and concentrate the dispute on the finances. The groups IV, V, and VI did not have the financial aspect on which to fight and the children were a passionate focus of the separation. As to the age of the clients, the same pattern as with the other professionals was reported, in that the bulk fell between 20 and 40, perhaps with more between 30 and 40, and with a smaller number under 20 years old.

The distribution had remained very similar for these officers over their careers, perhaps with the exception that there were more unmarried cases, and that these were largely in the younger age groups. This, it was felt, reflected the increased acceptability of unmarried relationships and separation. Further to this, an increase in the breakdown in second marriages was observed.

As to a correlation between the social group and the age of the clients, the officers in area two felt that the professional clients tended to be older, and the younger clients tended to be of groups IV, V, and VI. The under 20 age group

were again observed to be a difficult area. These clients tended to be unmarried, and separating from a relationship that never really started. Many of this group had never lived together; the mother felt a very strong sense of the child being her property, and the father having no place, whereas the father wanted some contact - often on his terms - due to the biological tie with the child. The difficulty for the officers was heightened as the service worked on a family therapy, or systemic, approach to separation. Therefore, in addressing the issues of custody and access, the officers encouraged the family, but especially the parents, to relate their separation to their former relationship to see the origin of the difficulties and thus enable communication. In the very young, essentially there was no relationship, the pregnancy was described as a "mistake". The model for the officers' approach, therefore, did not work: further, there were a number of moral questions about clean-breaks or maintaining the biological parent-child link which the officers did not feel equipped to answer. And yet, one-quarter of the domestic court's case load was young unmarried parents.

The solicitors in area one showed similar responses. Again they did not have the statistics, and could only give impressions. One obvious difference was that there is a hierarchy within the careers of solicitors, with the younger solicitors indicating more "working class" clients. This is because at the start of one's career, junior solicitors are given legal aid work, and therefore the "working class" groups. With promotion comes more work with the professional group. This reflects the difference in approach between legal aid criminal work and privately funded commercial work coming into a practice: the former being given to more junior solicitors. The wide range of work undertaken by the practices, which had both criminal and commercial clients, meant they dealt with those clients who also had matrimonial problems. However, all the sample indicated that they did get a spread of clients. In terms of age, the cases with children tended towards the 20 - 40 groups, although the solicitors also had a large client group around

the 50 - 60 group, with couples divorcing after the children left home (these cases having great difficulties over pension issues).

Once again the correlation between the younger clients and the working classes was seen: professionals leaving their family until later. However, the shift to more separating professionals with younger children was also observed. More unmarried fathers seemed to be seeking access, and these tended to be in the working class, often unemployed, and often very young. One of the solicitors felt that the 20 - 29 year old clients had a greater immaturity, and succumbed to "the seven year itch". The solicitor also felt that marriage at an early age carried a greater risk of separation.

In area two it was indicated that the age and social group of the clients of the solicitor depended on the size of the firm and the position of the solicitor within it. Whereas a solicitor in a small practice with only one or two matrimonial solicitors, or more general practitioners, would see clients of all ages and social groups, an established partner in a larger firm would get to see "older and wealthier clients" as his or her reputation had grown. Generally the clients were under 40 years of age, mainly falling between the late 20s and mid-30s. There was also a group of clients under 20 who were largely unmarried, where perhaps the couple did not cohabit, but the child lived with the mother and her parents, the grandmother looking after the child while the mother "got on with her life". Here the father would be seeking access to the child, and the dilemma of the biological bond where there was no relationship was expressed. A further group were of couples who had married very young, the wife being between 16 - 18, and the husband around 20 years, and where there was a child, or a child on the way. This group, it was felt by one of the sample, generally "had a 50 / 50 chance of surviving as a marriage". Where the couples were about 20 - 25 years old, they often tended to have a "sanguine" attitude to divorce, with a desire to

bring their relationship to a complete end.

As to the social groups, all the range were present in the sample. However, the more experienced solicitor in a larger firm might expect to see more cases from groups I or II. As to the change in the client group, the change which occurs in individual solicitors' client profile depends on firm size and position in the firm. Further to this, the solicitors observed changes in the client group generally. It was felt that there was more unmarried cohabitation, and fewer "shotgun-weddings". Alongside this, there were both more young people marrying and more in the over 30 age groups. More second relationships seemed to be outside marriage, and breaking up. In terms of a correlation, those relating to the social group of the young were again expressed, and comments were made that the professionals' separation seemed to occur more as a mid-life crisis, often the result of a husband's change in status through his career and the wife being "rather left behind".

Approaches to separation.

The parents, in the opinion of the professionals showed a number of different approaches to separation. The question was designed to give a number of characteristics, and then to allow for comments and other approaches. The characteristics were as follows:

- a. No dispute - decision already agree with spouse.
- b. Spouses willing to make agreement: need help.
- c. Spouses are hostile to each other.
- d. Spouses seek a court decision before they feel they are properly divorced: a symbolic fight.
- e. Spouse uses the custody and access question to bargain in other areas of the dispute.
- f. Other.

The professionals were asked to rate the given options on the basis of the number of clients displaying each characteristic, as follows: 1 = none, 2 = a few, 3 = some, 4 = a lot, 5 = all. A supplementary question was asked, seeking to find out if the professionals perceived any correlation between the age and social group of the clients, and their attitudes in the separation dispute.

In the responses of the conciliators in area one there was a difference of opinion over a. Two conciliators felt that none had no dispute, yet one other felt that quite a lot had already agreed before coming to conciliation. All their responses to b and c indicated that a lot of clients are willing to agree but need help, and that there is hostility between a lot of the parties. One of the sample indicated that this was an initial hostility; there was a feeling that there must be an underlying chance for a settlement by virtue of the voluntary attendance at conciliation. The parental desire to gain a court decision had a range of answers. One conciliator felt that a few clients needed such assurance, another, some, and the other who made responses to the question indicated that a lot of the parents needed some official declaration of their status. There was a high feeling (3, 4, and 4) that many of the parents were using the custody and access question as a bargaining counter alongside other parts of the separation dispute, for example financial support. The only other reason suggested by the conciliators was that

the father feels obliged to fight for the children, even if he has shown no interest in them before, in order that he might not appear as a bad parent.

As to the supplementary question concerning a correlation between the age and social group, and the attitude of the clients, the area one conciliators indicated that they felt there was a correlation. In terms of age and attitude, there was an indication that older clients felt that marriage was a lifelong commitment, and therefore were reluctant to admit a failure of the relationship. This was accompanied by feelings of guilt; indeed, older parents could well feel ashamed by their separation. Younger couples were more likely to accept separation without a stigma. The comments relating to social group and attitude concerned the practical effects rather than the attitude to separation. It was felt that those in the professional group had more financial freedom for both the parents to be involved in the child-care. This was not a skill related issue but purely economic. The feeling concerning the attitude was expressed succinctly by one conciliator: "they are all as bloody-minded as each other". There was a difference observed in the clients perception of the court. The professionals would see the court more as an equal, whereas the "working class" would see the court with awe.

The conciliators of area two expressed very similar views to those of area one. A lot of the clients, it was felt, wanted to resolve the dispute but needed help. Also it was felt that there was a lot of hostility in the clients generally. Some of the clients needed to have a court order to be able to move on in their separation. It was felt that a lot of the clients were using the custody and access issues as a lever in other disputes.

It was felt that all the ages and social groups talk of their rights to see the child, and that there was a desperation in the spouse who does not have custody that he or she will not be able to see the child. It was felt that the young often

seemed to cope more easily with marital breakdown, perhaps giving up too easily: the fewer expectations, it was felt, the less disappointment. One of the conciliators felt that to the young people of groups IV - VI, marriage was disposable: it was also felt that there was an almost total loss of any religious element to the marriage.

Court welfare officers generally felt that only a very small group of clients would have settled their dispute between the court hearing and the appointment with the service; others may have been ordered to the service for a satisfaction report under section 41 of the Matrimonial Causes Act 1973. There was a feeling that some would be in a state where they wanted to make a settlement but needed help - these people, it was felt, would go for conciliation. It was thus considered that when these clients appeared, the job of the officer was to concentrate on negotiation. It was also felt that a range of some to a lot of the clients were hostile to each other and similarly the desire in the parents for a symbol of the end of their separation. A lot of the parents going to the court hearing stage needed a court direction to make a transition from partners to parents. The comments were that this attitude was "very common", and one officer likened the process to a "divorce ceremony". Again, a lot of clients were reported to link the other financial issues of separation to the questions of custody and access. It was noted that this was not surprising given the natural link between the ability to parent and the need for financial security.

The other attitude displayed by the parents was emotional turmoil. Separation presented, in the view of the officers, upset to expectations and the power relationship between the two parties. Access was noted by many of the officers as the most difficult issue. Indeed, it was noted that in many cases it was the only real issue. The reality of the situation was in most cases that the person caring for the child before the separation would continue in that rôle after separation,

and that was recognised by most parents - hence the large number of mothers gaining custody. Access essentially keeps alive the issues of partnership which may well have been unresolved in the separation. It also poses a confrontation between past and future when a new relationship is entered into, and it provides a lever for the custodial parent in maintenance questions. It is the most difficult of issues as it is, perhaps, the most immediate: it depends on cooperation and communication.

The area one court welfare officers offered opinions as to the correlation of age, social group, and attitude. It was felt that the most difficult client group were the professionals. They were the most articulate, assertive individuals - both male and female - who were used to dealing with professionals. Thus, their expectations of the service and the process were most clearly defined, and their ability to argue was most developed. It was felt that teachers had an added dimension of difficulty, in that they were perceived, and perceived themselves, as experts in child-care issues. Another group of professionals, especially doctors and lawyers, wanted to negotiate settlements out of court and thus avoid the public arena. Other groups displayed more feelings of being threatened by professionals and the law.

By age, it was felt that younger clients were more naïve about marriage and parenthood, whereas older clients felt more guilt at the "failure" of the relationship. There were more lost expectations in the separation of a middle-aged couple, while a young couple could envisage creating new partnerships. Personal attitudes about fault, guilt, and blame were perceived to be very rigid in individuals regardless of age and social group, and varied according to personality: the law did not change the personal, moral view.

The responses from the court welfare officers in area two were very similar.

Again, all the couples had a dispute, unless they were one of a very few who had resolved their disputes in the weeks between hearing and meeting. A lot were at least initially hostile, although that simmered down as the family therapy addressed the issues of hostility. In this area the officers were keen to express the view that hostility and conflict were good things for the separation of the parents, if not directly for making arrangements for the children. There was a strong feeling that the clients (who came from the courts) wanted an order. This was for a variety of reasons. One officer felt that some of the parents needed to be able to say "I fought for you", another, that some parents needed the courts to take the issue away from them - that they could not decide for themselves. Further, the date of a hearing seemed to act as a focus for some of the clients. There was a feeling that some of the clients used custody and access issues to bargain with in other parts of the dispute. It was felt that there was an attitude of retaliation in some clients, whereas in others there was an unwillingness to accept or believe that the relationship was over.

There was a feeling in this service that the principle observed was that all the experiences of separation shown by the clients were valid: that unreasonableness only occasionally stemmed from the personality of the client rather than a response to the conflict and separation. Further, it was the belief of the officers that the way forward was to address the response of the whole family to disputes both in the previous relationship and in the family's future dealings.

The same issues of confidence in the process, and ability to relate to authority figures and negotiation were observed by these officers. There was a feeling that in groups IV - VI, the welfare services had a bad image in that they were associated with the removal of children into care. The same fear was felt towards the welfare officers.

The solicitors in area one showed a different set of responses to the question of attitudes displayed by their clients. All of the sample indicated that a lot of their clients had already made an agreement as to the arrangements for the children. They would then proceed with a section 41 divorce. One solicitor placed the figure at some 80% of the clients, many of whom would have financial disputes to resolve. This figure is only to be expected as against the conciliators and court welfare officers, as the solicitors are dealing with many more cases, and effectively act as a first stop for all separation cases, whereas the others are specialist services to deal with the questions relating to the children. The solicitors felt that some of the remaining clients were willing to make arrangements, but needed help. The sample felt that some or a lot of the clients were hostile to each other, but only a few in the solicitors larger client group, needed to gain a court order as a symbol of the separation. There was a difference of opinion as to whether the clients used the child issues as a bargaining measure against other parts of the dispute. Half the sample felt that a lot of the clients were bargaining, while the other half felt that only a few of the clients took this approach.

The solicitors in area one were keen to dissuade the clients from seeking a symbolic court order, and likewise from using the dispute over the children, especially over access, as a bargaining commodity in the financial dispute. This was done by suggesting that such an approach would be frowned upon by the court. A question of considerable concern for the clients who wished to agree but needed help, is what a reasonable access arrangement would be. Other approaches were noted as a sense of one's rights, and that long running "niggles" or irritations would surface in the dispute. It was observed by one of the solicitors that people know, by unhappiness, that something is going badly and needs to be resolved, but they do not always know how it can be resolved.

As to the correlation of age, there was a feeling expressed that the young couples felt that the relationship was over and they should be able to start again: they had an optimism for the future. Older couples did not see a chance for new starts: there was a stigma attached to separation for them, and a fear of loneliness. The older clients, and especially the women, feel a sense of betrayal: they had built a life with their partner and this was shattered, along with their expectations for the future. The recovery time for such clients, as compared with younger clients, is much longer. Even if decisions are made, anger will probably remain with all the clients. Some can separate the anger and the need for practical decisions, but the ability depends upon emotional maturity. It was felt that most manifestations of anger could be "talked out".

Regarding the correlation of social group and attitude, it was felt that the professional client would be more accustomed to dealing with professionals and situations in which they would have to negotiate. They had more verbal skills. Groups III - VI displayed a more confrontational style, but also displayed a more deferential approach to authority and authority figures. Thus, it was felt that this group would be more used to accepting the authority of others (for example, the D.S.S.) over their lives. Further, it was felt that there would be a strong cultural belief that the mother should have custody of the child in groups II - VI, whereas this was not as great an assumption in group I. It was felt that the younger people with young children had difficulty accepting that access and maintenance were not linked. The most difficult clients were felt to be the professionals. Additionally "other women" can be a great source of difficult attitudes throughout the client groups, in the opinion of one of the solicitors.

The solicitors in area two showed very similar responses to those in area one. Again, they felt that the vast majority of their clients had reached an agreement, and it was felt that one tended to forget how many were in this group. The biggest

problem for the remainder was access, and there was a willingness to try to find a solution in some of the clients, but a need for help. Hostility was seen in a lot of the clients, especially at the outset. The desire to gain a symbolic order was again not as prevalent as in the perception of the other professionals. There was a mixed feeling as to the use of custody and access as bargaining issues for other disputes; from a few to a lot.

As to the correlation, There was a feeling that the biggest factor was the individual clients temperament: a professional may know his or her rights, but equally may have his or her head in the clouds. There was a feeling that the professionals tended to talk issues through more and sought advice for fine tuning. It was felt, however, to the contrary, that professionals' fights over money could be very hostile. The solicitor who dealt mainly with the professional group of clients felt that "[they] are almost always more caring of the children's wishes and desires". This view was only expressed by one solicitor.

Age brought a difference of attitude to separation. Younger couples, perhaps with divorced parents of their own, tended to regard their own separation in a "matter of fact" way, whereas the older clients were reluctant to divorce. Older clients also tended to have different and complex financial needs.

Comment.

The responses to the question about the number of couples seeking a court decision as a symbol of the end of their relationship is particularly pertinent to the new law. The conciliators and court welfare officers see some to a lot of clients who feel a need to have an order concerning the custody and access of their children. In the light of this response, it remains to be seen how the Children Act 1989, S. 1(5), "no order" presumption will affect the parents' transition. The literature and attitude towards this doctrine is very much

weighted towards a "hands-off" approach by the courts. This fits in with the general theory advanced in this work, that negotiated settlements are accepted readily by the courts, as they fill the gap of uncertainty which the law has concerning the emotional question of custody and access. It may be that the only parents which this doctrine will help are those who already work out their post-separation arrangements. That this group is a small number of those seeing the conciliators and the court welfare officers means that the court response might well have to be that an order is in the child's welfare where the parents need one to move on in their dispute. It remains to be seen, but for a number, perhaps sizeable, of parents who have orders made, there is a need for the orders to give a symbol that the relationship is over. The courts will have to continue to grant these orders. If they do not, the danger is that the parents who need the orders will become stuck at a stage of the separation. The courts must seek to understand the power of the order in the individual case, and not become overpowered by the negotiation ethic as embodied in the "no order" doctrine: the stress in the doctrine should be placed on the qualification that the order should be made in the interests of the child.

A further and more central issue that emerges from the general comments is that, while the professional classes are well equipped with communication and negotiating skills, and are used to perceiving courts and professionals as figures who can assist them, seeing them as equals, the manual workers and other groups do not share those abilities and are not used to negotiating, especially with professionals. There was a feeling throughout the sample that social groups III - VI tended to have a fear of professionals, accompanied by a tendency to accept what professionals told them. Compared with the professionals, who in the course of work were making decisions, the others tended to be carrying them out. This image of professionals would be particularly pertinent to the development of negotiated settlements, as many of the separating couples would not be used to

such a model of decision-making.

There is also a danger of unequal power between the spouses in a client directed model; for example, the client may be a businessman, making deals for his company for a living, whereas his wife has not had the same opportunities through remaining at home to look after the children. There is a feeling in the philosophy of the negotiated settlement (especially as it has been accepted by the courts) that there is an innate equality in a couple's communication skills and, therefore, power, which allows them all to chose mediation. This may not always be the case, if indeed there is ever equality. The effect is then that the professionals could be relied upon by the clients to give them directions when they are unused to negotiation with professionals, and the sessions could be manipulated by the more powerful partner in a relationship to get the best deal for the individual. Thus, not only are the assumptions about the impartiality and child-centredness of the mediated separation in question, but the assumptions that there is an equality between the clients and an ability to use the negotiation process in all clients must also be called into question.

How do the clients cope with separation: is it your job to help them to understand their marriage breakdown and would you use other professionals to help in this process?

It was apparent from the preliminary interviews and the literature survey that the attitude of the clients was of central importance. Thus, the amount of change they experienced through the course of separations was of interest, as this may shed light on the nature of the arguments concerning the children. It was also of interest to explore if anywhere in the separation process the professionals felt that an understanding of the marriage breakdown was necessary to help in the conflict surrounding the children.

The conciliators of area one indicated that some of the clients had "developed a new type of relationship with their former partner which [allowed] them to work together in their separation when they initially came for advice".² Of the respondents, one felt that over half had a new relationship already worked out, while the other two felt that under half or very few clients were in a communicative state which allowed them to work through their separation at the out-set. It was felt that this new understanding may be possible if the clients were coming to conciliation after a period of time from the initial separation: communication, it was felt, improved with time. However, it was stressed that this communication could collapse if the dynamics of the situation changed again, for example, if one of the couple formed a relationship with a new partner. The feeling was that this could send the clients "back to square one".

It was felt that the process of conciliation helped to some extent in allowing the parents to change their perception of the separation dispute. (One should remember that the stress in conciliation is in finding a settlement for the practical problems of caring for the child.) The change could be seen in that the clients had a greater ability to discuss arrangements through conciliation. Misunderstandings could be clarified on the neutral territory of the service. There was a greater willingness in some of the clients to work together for the children; to separate the unhappiness and anger surrounding the separation, and to focus on the children's needs. There was also a feeling that conciliation allowed the parents to learn how to negotiate in the new environment; they became more flexible. It was felt that the relationship concerning arrangements was separate to that of the anger about the separation, and that the change was to move out of the anger and to make some arrangements for the children.

As to the conciliators' rôle in helping the clients understand the causes of their separation, the conciliators in area one were keen to point out that their work

did not have this remit. The conciliation was essentially an alternative forum to the court: it offered an alternative way of "managing the divorce". Thus, the focus was on communicating in the future over the arrangements for the children, and a historical perspective on the relationship was discouraged. The starting point is to assume the marriage has broken down, although it was felt that there was a need to admit the reality of the situation and the needs for the future concerning the children.

Regarding the use of the other professionals in addressing the causes of the separation, the conciliators in area one indicated that occasionally, but not very often, they suggested that the couples should attend counselling or *Relate*. It was admitted by one of the sample that there was often a disparity in the couples in terms of the clients' acceptance of the separation. It was stressed very strongly by one of the other conciliators that the question of counselling or understanding the separation was not available in conciliation. It was a more civilised, client-owned method of making arrangements for the children, rather than using the courts.

From the comments, it was clear that historical examination of the separation was seen only with a view to reconciliation. The issue was to start a negotiation process which would empower the parents in the future. The stress in the question, and indeed in the perception of counselling, was not about reconciliation, but about communication. How can a couple succeed with a process of negotiation in the future if the issues which caused the communication failure and the separation are not addressed? There must, surely, be a retrospective examination of the relationship to allow any understanding of the power relationships which lead to separation. This points to a fundamental flaw in the principle of mediation, which is based on the need for arrangements rather than process.

The conciliators in area two, indicated that they only see clients who have problems in working issues out together, and that under half, or very few, had developed a new post-separation relationship within which to work out arrangements. The conciliators felt that to some extent the attitude of the client to the ex-partner influenced the attitude to the dispute, and if the former changed so did the latter. Conciliators used different techniques to try and induce a change; perhaps reminding the parties that at one time they used to mean a great deal to each other. It was felt that conciliation provided "a natural setting within which clients can express their point of view without the exchange degenerating into emotional arguments. Sometimes this could lead to couples hearing what each other say for the first time in a long while, and this could change attitudes and move things along". This change was seen in a desire for more sessions, or a preparedness to bring children to the sessions, or simply in more co-operation. Misunderstandings could be clarified, and this brought its own reduction in conflict and change of opinion.

The conciliators felt that their rôle sometimes required them to address the issues of the separation and the relationship before it broke down, but there was a reluctance to do this. The feeling was that conciliation was a vehicle for making practical arrangements. Sometimes it was necessary to address the past, to enable one of the parties to make the arrangements, but as in area one, the focus was on a practical agreement. One of the common situations where it was agreed that the issue of the separation required an examination of the history of the relationship was where one party did not accept that the relationship was over. The conciliators were willing to recommend counsellors for the clients to address the separation issues individually, and also to recommend Relate. They did this principally so that the issue of accepting the reality that the relationship had ended could be addressed. Referring clients on offered professional help, as the other professionals had "greater expertise". Conciliation was geared to seeing the

clients jointly.

The court welfare team in area one in their approach were more open to the concept of helping the couple to understand their relationship. This is placed within the time constraint of the reporting process. Thus, the focus in practice is similar to the conciliators - can the couple reach agreement, if not, a report must go to the court. The vast majority of the cases, it was felt, do not come to the service as there is some agreement over the children. (This does not necessarily mean that the access will continue or that the environment in which it is undertaken is pleasant and stimulating to the child.) Of those coming to court welfare services, it was felt that the majority do not have a post-separation "working relationship" which allows them to make arrangements for the children. It was felt that some or quite a lot do leave the process of the service with a more reasonable attitude about the ex-partner: however, this did not mean that they could agree over future arrangements. There was some movement in some clients towards seeing the other person as a parent and not a former partner. There was also a feeling that the passage of time allowed the individuals to separate the parental dispute from the children dispute and to make arrangements. Part of the problem lay in the fact that the issue was not only how the clients perceived each other, but in how they perceived themselves.

It was felt that the welfare rôle sometimes required helping the couple to examine their former relationship. It was also felt that in order to do this more time was needed. There was a need to build up trust between the parents - to break down the expectations that the other would react in a certain unacceptable way. This took time. Sometimes the officers suggested that the clients see a psychotherapist. This would be very rare and in an extreme case. Occasionally the G.P. would be suggested, although it was stressed that all it could be was a suggestion. However, it was suggested that often attitudes are entrenched, and the

first person which the couple should see should be a counsellor to deal with the emotional issues of the separation. This was seen as very important, but it did not happen in practice. It was felt that there was a need for a greater involvement of other professionals, especially counsellors, as they offered help with the issues of coping with the separation - "getting mentally out of the relationship".

The court welfare officers in area two felt that under half of the clients recognised the relationship was at an end, and of this group many continued to dispute the issues of parenting. The crucial issue in the attitudes of the parents to each other was the clients' reaction to the grief, and their ability to cope with separation and loss. This was manifest in the individual in a variety of ways and expressions, and influenced their ability to form a new post-separation parenting relationship. One of the officers felt that identifying this as a "new type" of relationship was too ambitious, and that the officers aimed at finding an "improved" relationship. Once the clients had got rid of their anger, if they could do that, they were much more business-like about making arrangements. The need was identified to shift the focus from the clients seeing themselves as partners to seeing themselves as parents. This was described as the "whole force of the work".

For a significant number the dispute changes if the attitude to the ex-partner changes. Management of the conflict and dispute is crucial in order to facilitate this change. One of the officers disagreed with the general feeling that the clients should "understand" their separation. It was this officer's feeling that the dispute centred on the grieving process, and the important factor was not the understanding of the process, but the need to go through it. Thus, change in the perception of the ex-partner is essential. There was, however, a feeling that the officers had to be realistic in what they could achieve, given the time

constraints.

In area two, most of the officers felt that part of their work was facilitating a change in attitude, and part of this was a retrospective look at the causes of the failure of the relationship before the separation. There was a need to help the parties to understand the perceptions of the breakdown and the situation that were held by the other client. The officers perceived that the parents needed to be reassured that they still had a part to play as parents. This created a dilemma: the officers could see the sticking point, but their rôle indicated that they could not challenge the parties. There was a feeling that if the parties did not show signs that they were going to move forward, then the officers should stop the negotiation process and prepare a report for the court. The court, it was also felt, did not like the officers to address the issues of the family breakdown. An alternative view was voiced concerning the value of retrospectives of the relationship: one of the officers indicated that the pre-separation and post-separation situations were unconnected, and that the duty of the welfare officer was to address the future.

One of the officers indicated the general philosophy held in the model used in the welfare office in area two. It was felt that all conflict has meaning, and that the court welfare officer's job is to address the meaning. It was also felt that anger would be present as the process of separation necessarily entailed a building up of anger to enable the parties to "slam the door" on the relationship: a sort of breakout anger was needed to effect a separation. The main question for the separating couple is how that anger is managed: there is a need to help the client to understand the process, and therefore take control of the separation. There is a problem, though, in that the courts do not see the dispute as a part of a process.

As to the use of other professionals, it was felt that, very occasionally, there was a need to recommend that the client should use psychologist or psychiatrist - because of the dire state of the relationship, or a serious mental illness. Otherwise, the officers sometimes referred the clients to Relate, family therapy, or social workers, lawyers or conciliators. The feeling was that if court welfare did not help, the next stage was a court settlement.

The solicitors of area one held the view that, while in the end the parties would come to terms with the new situation, this would be outside the time-scale of the legal process: perhaps some 2 - 8 years. The issue is one of finding trust in the other party, and some changes could be seen during the course of the dispute, once the initial hurt had begun to die down. It was also felt, however, that many would still be prepared to fight, even if they had changed their opinion of their former partner. The changes were seen in an increased willingness to compromise, and perhaps changes in attitudes to access. One solicitor indicated that some clients have a "road to Damascus" change of attitude when they see the distress caused to their children. For some, it was felt that the effect of distress on the child could dissuade parents from continuing contact. There was also a feeling that some couples could be more reasonable once they had seen the court welfare officer, and the other spouse, and had talked the issues through face-to-face.

As to the duty of the solicitor to help the client come to terms with the separation, some felt that it was a duty in some cases. It was noted that the Solicitor's Family Law Association encouraged such an approach. Others indicated that they would become involved in these discussions at the invitation of their client. One was always concerned to address the issues of separation, using open-ended question, as it was useful to minimize any bitterness.

All the solicitors in area one felt that the court welfare office and conciliation

service were concerned with the issue of understanding the previous relationship, and all referred the clients to them. Sometimes, the solicitors used outside professionals; counsellors, Relate (for reconciliation: although, if they could not be reconciled, then conciliation would be the appropriate process), doctors, and priests. It was observed, however, that there was a reluctance on the part of the client to approach such people. One solicitor observed that counselling often cost a great deal of money. It was felt that more marriage guidance would help in making decisions about whether the relationship had ended, before seeing the solicitor. Very few couples made use of the available services, in the opinion of the solicitors.

It was felt, by the solicitors in area two, that there were very few clients who had a post-separation working relationship. A change could occur once a client realised the reality of the situation, and they could seek to work out a solution. This could reverse, however, if, for example, a new partner appeared. Access was potentially a big weapon, as it was a way of hurting the other parent. Sometimes a change could be seen positively in a clients ability to listen and to understand the other parties point of view: parties could become more reasonable in access issues. One of the greatest watersheds in terms of a perception of the ex-partner was, in the opinion of one of the solicitors, the fear of destitution. Once the financially dependent party realised that he or she would not be financially destitute, then the tension was relaxed. A new partner for the other parent could rekindle that fear of destitution and, therefore, the conflicts. Another felt that the change occurs "if one client has the ability and intelligence to step back and see that it wasn't all the other person's fault".

There were mixed feelings as to the duty to help the client to develop an understanding of their marriage breakdown. Some of the solicitors in area two felt that it was only necessary if it was an obvious sticking point, others felt that

it was dependent on the broader attitude of the client, and his or her ability to listen and to understand. It was felt that some clients felt a need to understand the breakdown before they could move forward in the separation. The solicitors used a variety of other professionals to try to help in that understanding in some cases. Counsellors, Relate and very occasionally clinical psychologists were suggested to the clients. One reported starting to suggest that the client should visit other professionals when the solicitor understood the fact that conflict and separation were a process.

Comment.

It is very difficult to piece together the reactions to the above questions. The issues were not separated enough in the questions to address whether the professionals saw the separation as an incident, or as a process - essentially concerning decisions or emotions (or a mixture of the two). It is apparent that there is an underlying belief, throughout the sample, that there is an emotional element which acts as a wild card in the process of making decisions for the children. However, this is met by two responses. Either the professionals believe that the process of negotiation will be enough to allow the emotional difficulties to be internalized by the clients and that this will be sufficient to allow them to separate the decision-making concerning the child from the partnership conflict; or, there is an acknowledgement that the conflict is a part of a process of development to a post-separation relationship.

The first position works well in the system as an ultimate inability to make the separation can be resolved by the imposition of a court order. This carries with it the belief that time will produce a mellowing into the required compartmentalization into the different facets of the dispute. In the latter position, there is more of a feeling of helplessness in the professionals - that

the clients have not reached a state of understanding - and that the settlement is fragile: however, this position is tempered by a realism that the job is constrained by time, and that other professionals have been suggested.

What is very noticeable is the repeated reference to the fragility of the post-separation position: many of the professionals referred to the arrival of a new partner as an issue that could start the conflict again. From these questions and the professionals responses, the conclusion can be drawn that conflict is part of a process of coming to terms with issues of the collapse of an institution in which the individuals placed a lot of hope and expectation. The process of law and negotiated settlements does not systematically concentrate on addressing these issues of process. If the client is unwilling, or unable, to explore the issues at that time, the relentless pace of the legal juggernaut requires that the report be made and the court hear the case.

The parents are not, from the opinions of the professionals, at equal stages of accepting the separation. The arrangements which the law imposes (or even which the negotiated settlement imposes) may not reflect a true post-separation state for the clients. This will not matter in some cases, as the arrangements will be changed to suit the parents as they adjust to the new family post-separation arrangements, as they work through the process of separation. However, for some parents, the legally imposed settlement will not work. They will not be able to work through the separation without help, which they will neither have the knowledge of, or the inclination to find (given their emotional state after the separation), and the outcome will be continued hostility - perhaps in a continued aggressive use of the law - or a giving up of contact with the children. The implication is that the legal process does not understand the process of the separation process in the parents, and it is a matter of chance as to whether the adults are ready to come to an agreement through the channels available in the

legal process. The most devastating fact is that even when the law imposes a settlement on the parents, it cannot make the parents gain an ability to be flexible and tolerant when access situations cause practical problems: the settlements depend on the ability of the parents to communicate with each other. This is clear from the descriptions of the types of disputes and attitudes that some of the clients have in the system. Thus, the child's best interests may be identified by the court, but the process is impotent in giving effect to the interests.

1. There is a need for more cross-cultural studies on the understanding of the child's welfare, and separation and marriage generally, in English law. There are very few cases concerning custody and access in ethnic communities in England, and very little is found in academic literature.
2. Questionnaire Part 3 question 9, Appendix A.2.

3.2 THE EMPIRICAL FINDINGS.

D. The Best Interests of the Child.

The final questions in the study concerned the professionals understanding of the child's best interests, and especially if they had any systematic or theoretical framework for this understanding. Whether there is any involvement of other professionals outside the sample to help in determining the child's welfare was of particular interest. The first questions sought to establish if the professionals had any process for the investigation of the child's welfare, then the remaining questions concerned their theoretical assumptions.

i. the process of determining the child's best interests.

From the work so far it can be noted that there are three theoretical models into which the professionals broadly divide. Professionals may approach work in the field of determining the arrangements for the children on their parental separation either as an investigator, with a view to producing reports and asserting a decision; alternatively as a therapist (in a very broad sense) working on problems of understanding and accepting the separation and the relationships involved; or as a facilitator in a negotiation (mediation) model, working towards the parents finding their own arrangements for the post-separation family. It is admitted that there is little evidence of the second model, however, there are hints of it as distinct from the pure negotiation practice, but it would not be called "therapy" in the psychotherapy or family therapy sense.

In the third model, the danger of creating an alternative, quasi-judicial forum, which imposes arrangements involving the subjective standards of the professional, has already been noted. Further, in the first model, there is an equal danger that the professional's subjective understanding of the welfare of children, and especially of the individual child, will equally colour the process of investigation (in as much as it colours the interaction with the parents and other individuals), the report, the court appearance, and therefore the imposed settlement. The values placed on the "child's best interests" become crucial: some of the danger of the intervention could be softened by a coherent, and consistent understanding of the welfare of the child - as this would adopt the statutory requirement into the negotiation process. The concern is that, like the courts, the professionals throughout the system of separation law have no systematic or theoretical understanding of either the child's best interests or of the needs of the child in separation. This, of course, has implications not only for the child who's future is imposed by the courts, but to all children whose arrangements are shattered by family conflict and separation. So, what evidence is there from the professionals on this issue?.

Should you ask what is in the child's best interests?

The reactions to this question differed throughout the sample. In both areas, as in all their responses, the conciliators felt that they should address the child's welfare. The arrangements for the child were the focus of the conciliation, therefore the arrangements should focus on what is best for the child. In area one, one of the conciliators felt that there was a danger in asking the question, in that it could lead to an imposition of the subjective views of the conciliator. It was also felt by that conciliator, that some suggested arrangements might well conflict with the conciliator's concept of the child's welfare: in such a situation, the conciliator felt that it would be correct practice to point out the

discrepancy for discussion. The child's best interests were stressed by all the conciliators to be a focus for the negotiation: a chance to shift the negotiation from the parents' rights to those of the child, and, therefore, to allow discussions as to the arrangements for the child. The overwhelming philosophy of conciliation, however, was that the child's welfare was a focus and not a matter for investigation by the conciliator. In area two, one of the conciliators pointed out that it should be borne in mind that the interests change over time.

The court welfare team in area one, on the other hand, indicated that their rôle was centrally concerned with investigating the child's best interests. If the attempts at negotiating a settlement failed, then their duty lay in gathering evidence of the child's needs and welfare for the court. One officer described the concept as "at the back of the mind all the time". Another officer indicated a similar concern over the fear of reading personal, subjective values of the child's welfare into the case. An attempt was made to avoid this, although it was felt to be inevitable that the values would colour the case, by asking the parents what they felt were the child's best interests, and using that information as a starting point for the work of negotiation and of reporting.

The officers in area two indicated a similar understanding of their rôle. One of the officers indicated that the meaning of the concept was unclear, and that in practice the definition was a question of intuition and common sense. Another officer indicated that the child's best interests was the control with which one assessed one's thoughts about the case. Another indicated that the child's best interests were not an ideal, but rather "the best possible deal for the child".

The solicitors in area one also felt that the question of the child's best interests should be addressed in the course of their work. One indicated that the concept concerned the "broad things: physical care, love etc.". It was felt by

another that where the parents present an agreement to the solicitor the issue of the child's welfare was not closed. In such a situation, the solicitor indicated that the client should be asked to explain why the particular arrangements would be in the child's best interests. It was also indicated that in the majority of cases, the child's welfare would be obvious. One solicitor felt that the question of custody was not the real problem, as it was often so obvious. The problem, for that respondent, lay with access, where the reference to the child's welfare was crucial. It was felt, however, that, "having said that, one can't often say what is best". The dilemma of imposing one's own values of child care was noted by one of the sample. This solicitor felt that one should point out the general position, that the focus should be the child's welfare, but beyond that there were no real ways to assess the child's interests. Time would be the only indicator of the needs of the individuals.

All but one of the solicitors in area two indicated that they did have to ask what was in the child's best interests. However, one qualified the positive response, saying that ultimately the solicitor had to act on the client's instruction. One of the biggest bars for the solicitors to communicating about the child's best interests was a difficulty in coping with the expectations of the client, who may well have set his or her sights very high, comparing what the solicitor suggested with the settlement that friends got on their divorce.

Standard practices.

The next set of questions concerned the approach the professionals had to find the child's welfare, and whether this was by a standard practice in each case. This showed both factual and theoretical differences. The court welfare team in area one generally indicated that there could be no standard approach, as the process was largely governed by the opportunities afforded by the parents.

Different parents and children would have different needs. There were, however, certain elements which the officers wished to include, and to this extent the welfare officers were the only group amongst the professionals with a standard set of information which they wished to identify and address in their work.

One of the officers indicated a wish to assess the parents for their needs for space and intimacy, and how the children fitted into the parents system. Further, each parent would be assessed, informally, to ascertain what he or she could actually offer the child - to establish the least detrimental alternative. Another officer indicated that part of the practice was to gain a picture of the child's view of things, as the child often has a wish that should be considered (without making the child feel as if he or she had made the adult's decision). The officer indicated that there was another issue to examine of whether there was any continuity to maintain in the future from present arrangements.

A further officer felt that the standard practice was as follows: "who is the child? - what has happened? - what are the future possibilities? - an assessment, in one's own opinion, of what is best for the child's future". This was developed by practice and experience. The parent's view of the child's best interests, if they expressed any views, were central to the report for this officer, as otherwise the court would require a plan for the child's future welfare from the officer. This court view would throw open the dilemma of the rôle of the welfare officer in expressing subjective opinions. This officer, and others within the sample, expressed the opinion that the court saw the officer as the expert who would give the answer for the future arrangements. The officer felt that this was an abdication of the court from its duty to judge the case. However, it was felt, sympathetically to the court, that the abdication occurred because the child's best interests were issues which the court had little skill to answer, as it was not a legal but an emotional matter. Perhaps highlighting this misconception of

rôle, some of the solicitors in the sample indicated that the definition of child's best interests were the concern of the court welfare officers.

In area two the court welfare team had a more standard approach to their work. They preferred to use a technique derived from family therapy. The officers would then work with the family as a whole in the first interviews, then work with the parents alone in subsequent sessions, addressing the obstacles to settlement, and attempting to allow the parents to reach their own arrangements. However, in practice the officers had to be responsive to the dynamics of the individual families, and the options which are offered by the parents for the settlement. These options may be limited, due to reluctance to participate.

The solicitors of area one all felt that they had developed a standard approach to separation cases, largely over the course of their experience. The first part of the process involved gaining a perception of the client's history, and building up an understanding with the client. The second part involved negotiating, in an attempt to settle the dispute. If this was not possible, the solicitor would then move towards building a case for the client to take to the court. It was felt that the court was unpredictable, and did not operate in the child's best interest, as it tended to heighten conflicts. It was also felt by one of the solicitors that courts tend to be pro-mother and keen to maintain the *status quo*.

The practice for the solicitors, when they needed to address the child's best interests, was largely a matter of common sense. The welfare report played a central rôle in determining the construction of a court case: the experience of the solicitors was that the courts would almost always follow the officer's report. Thus, if it was not favourable to one's client, it was the practice to engage in an urgent attempt to find a settlement out-of-court with, and for, one's client. One solicitor indicated that the standard approach concerning the child's

best interests would be to make sure that the client considered the child's welfare. Given the position that the solicitor took instruction from the client, it was felt that no more could be done, unless the client accepted the advice, to consider the child's welfare.

In area two the solicitors indicated that they did not really have a standard procedure. Many indicated that every case was different, and the solicitors' responses varied with the clients desires and the merits therein. One of the solicitors expressed a commonly held view throughout the professionals, that the process for discerning the child's welfare was largely based on "intuition, gut feelings, and trial and error". There was a natural feeling for how the case would proceed, and the solicitor worked to get the client to see what was likely to happen. One indicated that a way of proceeding with the questions concerning the children's arrangements was to ask the client to look at the problem from the other side.

The conciliators in area one indicated that, as such, there was no standard approach to dealing with the child's best interests, as the process of conciliation concerned a negotiation between the parents. Conciliation was purely a negotiation forum, concerned with finding answers to the practical problems concerning the children on parental separation. The underlying philosophy was that generally an agreement was the property of the parents, who were naturally empowered to make decisions about their child's future, and therefore would be in the child's best interests. However, it was indicated that the child's best interests would be used to remind the parents that their separation only indicated an end to their being partners - their parenthood continued. The interests of the child were a focus for the negotiation, used to shift the language of the discussion away from the parents' conflict and onto the need for arrangements for

the child, and the child's rights. This could be achieved by using examples: "what happens at future birthdays? - Christmas? - or if there is an accident? - or alternatively, what is going to be the position over correspondence with the child?". Thus, they operated outside the investigative model, and in a negotiating model.

In area two, a standard approach was reported by all except two of the conciliators. The process, incorporating a family therapy modal with co-working, had been developed in the service. The philosophy was to meet with the parents "to try to get them to agree on matters concerning the child". This was achieved by asking questions such as "why do parents think they are here?" or "what do they see as the problem?" This was felt to be a very open approach, "accepting all that they bring, and, learning from their approach to which of them should 'go first', quite a lot about the couple".

Do you see the child?

The solicitors in area one offered the plainest answer to this question. All except one indicated that they never saw the child. This, it was felt was the job of the court welfare officer. It was a specialist job, with dangers for the child, with the potential of doing vast amounts of harm to the child if the child was made to feel that he or she had chosen one parent as against the other. The only occasion a solicitor should see the child, it was felt, was in care and wardship proceedings, when the solicitor acts for the child. Even then, one solicitor indicated, the dangers were still great, and the solicitor should make a supreme effort to become accessible to the child (wearing casual clothes, etc., and asking no direct question).

Another situation in which the child might arrive in the solicitor's office is

when the client turns up unannounced, or having had difficulty in finding a "baby-sitter". This was "actively discouraged" by the solicitors. Further to this, it was felt that the remarks made by the parents concerning the child's wishes should be treated with the utmost scepticism by the solicitor. The tendency of parents to be willing to engage the child on his or her side was noted with regret by the solicitors. The parent would have been selective in the views expressed, and it was felt that children "tell you what they think you want to know". In principle it was felt to be undesirable to see the child, as a "part of the infants security was that adults run the world".

One solicitor expressed a contrary view to the general comments above. It was felt by this individual that in the stage of preparing the client's case for court, the child could be interviewed if he or she had something to say. In such a case, the child would always be seen with the client. This, as is indicated, was a "rogue" view.

In area two, the solicitors responded in much the same way to those in area one. The overwhelming feeling was that the children should not be seen. One suggested that the solicitor should "keep children as far away as possible". The solicitors felt that they represented the parent, and the judge and the court welfare officer represented the child. The area two solicitors indicated, where they expressed an opinion, that the child would be between 7 and 10 years before it could understand and participate in the issues of separation - one feeling that the child would be 12, when it could vote with its feet, before it could really be involved. If the client brought the child, as they did without invitation. The solicitors indicated that they could not see the child with both parents together, due to Law Society rules.

A very similar view to the solicitors' was taken by the conciliators in area one.

The basic view was that, as the purpose of conciliation was to address the parents inability to agree on arrangements for the children, there was no reason to see the children for the purposes of conciliation. One of the conciliators, however, indicated that the child might be seen, with the permission of the parents, to establish in the conciliator's mind more details of the separation and the child's wishes. The purpose of such an interview would be to give the conciliator a greater understanding to "move the adult negotiation forward". However, this, it is suggested, could be particularly dangerous to both the child, and to the concept of facilitating discussion. If the conciliator is armed with external knowledge, the slope between referee to advisor is made very slippery.

The conciliators indicated that they would all see children if the parents found it hard to discuss the separation with them, and wished the conciliator to explain what was going on, or the arrangements which had been agreed; or if the parents could not explain to a child who had become confused by the situation. This was an informing process, giving the child his or her own space to express feelings. It never sought to place the child in a decision-making situation. It was felt that a child would be able to understand what was going on from about the age of four years. One conciliator argued that the child was able to participate at any age, and by virtue of that involvement would be aware of the family dynamic. It was felt that this work with the child was legitimate as children need to talk about separation and their experiences. Part of the practice of the conciliators was to encourage those parents who had a degree of agreement to talk to the children together about the situation. Where the conciliator saw the child, the method of whether the child was seen alone, with his or her parents, or with siblings, depended largely on the age and maturity of the child, and the parents feelings. The preference was towards not seeing the child alone, nor for seeing the child with one parent only. The situation, however, would always dictate how the interactions took place, and they did not always follow the conciliators'

desires.

The conciliators in area two indicated a greater willingness to see the child, perhaps seeing the child with the parents at the second and subsequent sessions. The child would be allowed to play, listen or participate, as it wished. The preference was to see the child with the parents together, and often with the whole family together. There was a reluctance, and in some cases refusal, to see the child alone, and certainly to see the child with only one parent. Similarly, the officers would not see one parent alone for conciliation. There was a variety of answers to the question of the age at which the child could understand the proceedings and be involved. Some conciliators argued that the child could be involved from any age, others thought that the child could only be involved in the process at about 4 -5 years, or in one opinion 9 years of age. One of the conciliators stated: "I prefer to have the child / children at any age. A six month old babe-in-arms has solved a case for us, as has a 3 year old after 4 sessions with a social group IIIa family". As to the reasons for including the child, one conciliator reported that the child was seen "when parents were in bitter conflict about what the child wants". Another indicated the following: "Children are usually included after the first conciliation session if parents will consent to bring them. The family are seen together. If one or both parents suggests a meeting with children alone, we will consider it - it depends on the circumstances whether we do see a child without parent(s) or not". Another indicated: "The decision to see the child is made when there appear to be matters on which the child's views can be useful. Also if it seems desirable to observe a child's relationship with its parents".

The court welfare officers in area one expressed a very different view. Their rôle, without reference to the attempts to mediate, in the system of separation law was to see the child and present a report to the court which would enable the

court to decide the welfare of the individual child. Thus, it was seen as imperative by all the officers that they should see the child. This was regardless of age. The onus was on seeing the child, rather than interviewing the child: One of the officers indicated that a central problem in interviewing the child was the danger of undermining the parental responsibility. Another danger which was expressed was of creating a relationship with the child, which would involve gaining the child's trust, and then "dropping" the child after a short period of time. The danger was heightened by the fact that the rest of the child's life was usually in a state of chaos.

The officers indicated a variety of views as to the age at which a child could understand the separation. One suggested that any child could participate in the separation process from a very early age, another, from 3.5, another 4 - 5 years, another officer feeling the age would be 6 or 7 years. The common factor was that all the officers felt that the important issues were the development and intelligence of the child, or its maturity. One of the officers indicated that the child was always involved, whether consciously or unconsciously.

The officers indicated that they attempted to see the child in the family group, and then in a mixture of ways, to find out the nature of the family's interaction. Officers indicated that they never saw a baby alone, but may well see other children, using special techniques of drawing and playing games with the child to address the issues of the separation indirectly. Again, the age and maturity of the child was important in deciding how to proceed, although in practice this was often largely academic, as the crucial factor in how the child would be seen would be the parent. Thus, while a joint meeting was preferred, the officers could not force the parents to attend. The reason for seeing the child was to see how each of the parents related to the child, and then to allow the child's wishes to emerge and be indicated to the court. The location of the meeting was important:

the office disarmed the parents, the officer was not dependent on the hospitality of the parent. However, the child would be in familiar surroundings at home, and could be more relaxed.

The court welfare officers of area two always tried to see the child, and would seek an order from the court if the parents tried to obstruct them. As to the method for seeing the child, the officers indicated that their preferred method was to see the family all together, and to work with the child - using drawings, geneograms, and other play situations - in the presence of the parents. This would allow the parents to focus their attention on the needs and responses of the child. Clearly, this was dependent on the parents agreeing to joint meetings, and there was some problem with parents refusing to co-operate. If the parents did not participate in the family assessments, the officers would have to see the child and the parents individually. It was apparent that the latter reaction by the parents was rare.

Throughout the sample, two responses can be seen concerning the involvement of children in the process. The first is that involvement of the child is based on a desire to gain some information from the child, or for the child to produce a reaction in the parents, which will focus the negotiation on the needs of the child. This model could be called the "child as prop" model. This model is the prevalent one in the responses of the professionals. Generally the solicitors do not see the child, but, importantly, a few make an exception *where the child can give a view in line with the parents case*. The conciliators display a view that the child can be a catalyst in shifting the parents argument from the parental conflict onto the child - perhaps tugging at the parents emotions? The court welfare officers indicate that they see the child to allow its views to inform the parents negotiation: to be part of the adult's process of decision-making, without being placed in a position of directly stating which outcome they wish to

see. Alternatively, the child is seen by the court welfare officer in the officer's investigative rôle, to allow the officer to present information to the court.

A second, alternative, model was seen in only the area one conciliators. They displayed the first model as well, but one of the justifications for seeing the child was to explain to the child the arrangements that the parents found difficult to communicate. This model could be described as a "helping the child" model. This model allowed the conciliator to offer the child a space to express his or her concerns to the conciliator. The dangers of these models will be discussed in part four.

Which other people do you see in ascertaining the child's interests?

The conciliators in area one indicated that they sometimes saw grandparents, other members of the extended family, and new partners of the parents, if the parents wanted them to be involved, and especially if the other individuals were involved with the care of the child. There was a reluctance to see new partners unless it was particularly necessary. Again, it was stressed that the process was not investigative, but a negotiation. The invitation must therefore come from the parents.

The area two conciliators expressed a similar opinion: they would very occasionally see grandparents and extended family. However, one of the conciliators indicated that teachers and general practitioners had been contacted by the conciliator at the parents request - to explain situations.

The court welfare team indicated that when their work became obviously investigative - i.e. when the parents could not agree for themselves - then the

officer would ask a wider group of people than the immediate family about the child's needs, depending on the case and the circumstances. Time would also figure as a constraint on the range of people.

All the officers indicated that they would sometimes interview the grandparents and some of the extended family. It was felt by some of the officers that they should avoid these interviews unless they were completely necessary. There were mixed opinions as to whether the new partner of a parent should be interviewed: one officer seeing the willing partner always, two seeing him or her often (one at the request of the other partner), and one officer sometimes if a custody case was involved. This response was surprising. It had been expected that the new partner would be an important figure to see, as the contact with the child would be great, and the upset caused by the new partner to the former spouse had been indicated to be very great in the rest of the study.

The officers indicated a variety of opinions as to the value of speaking to teachers. Two indicated that contact would always be made with the child's teacher, as he or she was a "vital source of information". Other officers saw the teacher often, or sometimes. Other individuals who would be seen sometimes, although rarely, were family friends and neighbours, health visitors, and informal caretakers. Doctors, social workers and medical consultants would be seen if necessary. Any one who could perhaps figure as an initial meeting point for access would also be seen.

In area two, the officers concentrated their work on the family, and on the parents reaching their own agreements. Thus, the traditional investigation was rare. When they did need to undertake an investigation, the officers tended to concentrate on those with close relationships with the child. However, some of the officers would be willing to speak to teachers and health-carers if it was

necessary.

The solicitors in area one indicated that they saw people other than their client if the case moved to the evidence gathering pre-hearing stage. Thus, anyone could be seen who could speak for the client. Child-minders were noted, as they have contact with the child regularly. Essentially, the solicitors would sometimes see all the individuals mentioned in question 4.4. One of the solicitors indicated that contacting the general practitioner could be difficult, as he or she would usually be treating both parents, and therefore would be placed in a difficult position if called into court to testify as between them. Likewise, it was felt that teachers would be reluctant to be interviewed by solicitors. Consequently some of the sample indicated that they never approached these other professionals. It was felt that the proper vehicle for the views of these professionals was the court welfare office.

The solicitors in area two indicated that they would see anyone whom the client wanted them to see. This did not mean everyone in every case. Again, as in area one, the interviews were with a view to finding support in the court hearing for the client.

How long do you devote to discovering the child's best interests? And, do you have any other elements in your standard process.

As a final question in this group concerning the practice of the professionals in determining the child's best interests, an indication of the average time which was spent on the issue was sought.

The conciliators in area one indicated that, while the sessions were a negotiation and therefore not concerned with determining the child's best interests as an

abstract concept away from the parents' practical discussion, that the concept of the child's best interests was the focus of the sessions. One of the conciliators indicated that 50% of the sessions directly concerned the parents discussing the child's best interests; another felt that the "majority" of the meetings concentrated on the point. The first conciliator indicated that the child's best interests were used as the initial questions to impose a structure on the negotiation. The acceptance of the concept, in the conciliator's view, depended on the "parent's degree of insight - and the degree to which the child's best interests accommodated their own".

The conciliators felt that once the concept of negotiation had been understood, conciliation could begin. One of the conciliators indicated that the parents might be seen separately, to gain a further insight into the problem, although this was rare, and contrary to the generally stated principles of conciliation. A further alternative was reported to be a trial period for arrangements followed by an evaluation session.

In area two, the conciliators felt that the whole process differed from family to family, and the child's best interests was the purpose of the negotiation. Further, the process could be curtailed at any time by the opting out of one of the parents. In area two the family therapy technique and co-working were stressed by the conciliators.

The solicitors in both areas indicated a variety of responses to the question of the length of time devoted to the assessment of the child's best interests. One felt that no attempt should be made to assess the child's welfare: negotiation was a matter for the subjective views of the parents, and if that was not fruitful, then the court was empowered to decide the child's welfare. Another felt that the discussion of the court welfare report was a valuable catalyst for the discussion

of the child's welfare. The remaining solicitors in area one indicated that the child's best interests were all the time at the "back of the mind", or were a "thread running through the process". However, the majority were prepared to say that once the shift had been made to preparing the client's case for court, the child's best interests ceased to be the consideration for the solicitor.

Other aspects of the solicitor's practice in both areas were felt to be the importance of stressing the cost of conflict and contests. One solicitor in area two indicated that the rôle of the advocate was to indicate to the client what was likely to happen in court. Also, the channelling of clients to conciliation was again noted.

The court welfare officers in area one indicated that the child's best interests were the focus of all the sessions when dealing with a case. The number of sessions varied according to the client. One officer indicated that between 3 and 4 sessions would be sufficient, while another felt that perhaps 10 would be needed. Of the 10, 6 would be with the parents alone, negotiating and investigating, perhaps jointly, or individually, 1 or 2 would be with the child, and perhaps 2 would deal with other issues. Always, the process sought to address the various parties' needs, within the usual constraints of funding and, therefore, time.

Other elements of the officers practice in area one involved testing arrangements for the child and returning for evaluation, testing ideas with the older child, and co-working (not a standard practice in area one). Another aspect of the officers standard practice was the report. The officers expressed a wish to produce a standard format report, thus giving the court a consistent quality of report.

In area two, the officers indicated that all their work concentrated on the child's best interests. Two indicated that they spent between two and three sessions of perhaps one and one-half hours specifically on the question of welfare. The officers indicated that other elements of their standard practice included co-working (this team co-worked every case), and the systemic family therapy basis of the practice was emphasised.

ii. the interests of the child and the desires of the parents.

The next set of questions sought to clarify the earlier question concerning the identity of the professional's client. First, the questions sought to establish the exact nature of the child's position in the process. Secondly, the questions concerned the parent's ability to seek outcomes against the child's welfare, and the professionals responses to that.

The court welfare officers are those officially charged with the investigation of the child's welfare and, although technically the officers of the court, the officers in area one expressed the view that the client was their client as well as the client of the court. Only one officer indicated that the process was an attempt to work with the parents and other professionals in an investigative way to achieve the paramountcy of the child's best interests. The other officers all indicated that while the focus of the work was the child's best interests, this was achieved through the parent's negotiation. It was felt, however, that the best interests would probably be the parents and the children living together happily, and this could not be the case, so the "best" interests was rather a misnomer. It was pointed out later in the study, that the concept of the child's best interests could give an impossible target, and therefore, to the parents an impossible image of parenthood.

The officers of area two reiterated the dilemma that the court was the client, the parents came because they were sent by the courts, and the children were the powerless focus of the process. The intention was to move the parents to a position where they could examine the child's best interests for themselves. It was noted that many of the parents spend some of the time with the officers expressing their anger and emotions. One of the officers did consider that the court was the client, but felt a responsibility to the child.

The solicitors of area one felt that the child was never "in some way" their client. The parents instructed the solicitors to act, and ultimately the child's interests were protected elsewhere. Two solicitors, however, indicated that they felt an obligation to the child's best interests, which created a tension in their work, especially when the case had to go for a hearing. Another indicated that the responsibility for the child's welfare fell with the parents, and they should not opt out of that responsibility.

In area two, the solicitors indicated that the framework of considering the child's best interests ensured that the child was the central issue in the work. One solicitor indicated the view that the solicitor should not become involved with the child. All the solicitors, however, indicated that the parent was the client, and the final duty was to present their client's case. They considered the court welfare team and the judge were the safeguards for the child.

The conciliators in area one felt that parenting was "superior to the subjective belief of the professional". Objectivity in conciliation could be defined as fairness and equality in negotiation. The duty was to concentrate on the practicalities of the situation. The child's best interests, as has been indicated, was felt to be a focus within this rather than an end of the process. One conciliator was adamant, however, that the child was not a client in any way.

The process was the facilitation of discussion, and the parents knew the needs and interests of their own child, and a conciliator had no right to define the interests as he or she believed.

The conciliators of area two generally indicated that the child was the focus of the process, and therefore in a strange way was akin to a client. One of the conciliators disagreed, feeling that the process was owned by the parents, and their negotiation was the purpose of the service. Another of the conciliators indicated that: "Parents find it hard to focus on children's needs when caught up in their own emotions. Conciliators can point out the child's point of view when the parents maybe can't see it. Our aim is for the benefit of children - even if indirectly". Another indicated: "We exist to help the parents find a solution that is appropriate for the family, and least damaging to the child. The child is the focus - but parents have to be comfortable, else the child will not be comfortable".

Perhaps this comment of the conciliator encapsulates the paradox for the negotiation (mediation) model. One theory pushes the mediator to say that the parents have a free-hand in making the settlement, the other drives the mediator to believe that the child has rights. The attempt to solve the paradox is in the rhetorical position that the negotiation "focuses on the child's welfare". However, this necessarily entails a value judgement, which does not solve the paradox, but merely restates it in a more socially acceptable way. The problem with the model is that, unlike the law, it does not have a duty to perform. The law is charged to follow one line - the child's welfare. The mediators have set themselves up as a body which can allow the parents to maintain their right to direct the moral understanding of their child's welfare. The failure in the model comes because the parents have lost sight of the children in their confusion at ending their partnership. The mediators attempt to reassert the child's welfare,

but by doing so allow their own values to come to the fore, as they do not referee a debate on the subject but initiate and direct the discussion.

Could your role or the parent's desire be contrary to the child's best interests, and how often does this occur?

The conciliators of both areas felt that generally, if the parents came to an agreement, then this would fulfill the child's best interests. Occasionally, it was felt by one of the area one conciliators, the parents would devise a "crack-pot" scheme which "will make for a restless time for the child, which will be emotionally upsetting". It was felt that it was the conciliator's duty to point this, and other conflicts with the child's welfare, out to the parents. The parents then had the choice to reconcile the problem. It was felt that if the problem could not be resolved, then the court was the forum for the discussion. It is argued, however, that this is another danger of a negotiation-centred scheme. If the parents agree a scheme which could be harmful to the child, then the fact that there is an agreement may cause the parents to withdraw from the process, and the arrangements could go forward for some time, causing the child emotional hurt. Essentially, in negotiation the child's welfare may not be paramount in practice, but will be argued as such in the semantics of justifying negotiation. This is a problem for both practice, which does not achieve it, and the system which entails an unsolvable paradox - that the parents own the right to decide, but the child has rights which may not coincide with their decision but should be protected.

The conciliators, in both areas, also felt some parent were prone to seeking arrangements which were not, in the conciliator's opinion, in the child's best interests. The proportion was thought to be between 30% and 40%. One of the conciliators, however, felt that the question made an assumption which was

unhelpful in separation law, i.e. that there would be an ideal situation for the parents to find after separation. This, it was felt, was not the case: conciliation was simply geared to looking at one's own motives in the separation and those of the other person. This, however, was not borne out in the other responses for conciliation throughout the study. As has been reported, the conciliators were concerned with bringing the parents to a neutral ground where they could have a refereed discussion about the future arrangements for the child. This conciliator was indicating a wish to engage in a therapy model, and the indication was that this was neither desirable nor feasible due to the constraint of time. One of the area two conciliators expressed a general belief: "Who am I to presume what should happen in a family". Generally it was considered that it would be rare that the decisions of the parents would cause any more emotional danger than would happen with some "happily married" parents.

The court welfare officers in area one indicated two extremes in answering the first part of this question concerning their rôle and the child's welfare. One officer felt that there was never a conflict as the officers' focus should always be the child's best interests. Another felt that the officers' rôle and the child's welfare often came into conflict, as the work was often with the parents who would have to accept the arrangements. It was felt by another officer that there was a natural feeling in the officers that it was difficult not to act in a "social worker" rôle towards the parents who had been emotionally hurt by the separation. Again, however, it must be stressed that the general impression of the officer's work given throughout the interviews was that, while there was a wish to engage in therapy, and a definite need for therapy in many of the parents, there was not the time or the environment to enter into such a process within the court welfare rôle.

Contrary views were again expressed over the difference between the child's

interests and the parents' interests. On the one hand, it was felt that the differences were only to be addressed by the officers where supervision orders were granted, as there was no time for on-going work with the families. On the other, it was felt that reconciling the difference was central to the job of the officer, especially as "no-one else was really doing it". The former attitude showed evidence of the investigative model, as the courts were empowered to make the decision, whereas the latter fell into the negotiation model - the parents being given the opportunity to talk the difference through with the officer. If this failed the court would be the final decision-maker. Another officer felt that the reconciliation of the parents' interests with those of the child should be the concern of the officer, but in practice never were.

It was felt by all the officers that the parents sometimes sought arrangements which were not in the child's best interests. The majority of parents, it was felt, wished to act in the interests of their children, but it was felt that the court was generally the forum to resolve the issues when the parents could not move to an agreement for themselves. One of the officers felt that within the court hearing it was imperative that the parent came away feeling that his or her opinion had been heard. This was described as a therapeutic court hearing. It was, however, generally felt that the settlement of conflict achieved in the process was only at a superficial level, and did not address the underlying hurt and conflict.

The officers of area two felt that sometimes the rôles were in conflict, although this tended to happen a great deal more in wardship proceedings. The officers were generally optimistic and thought that about 90% of the parents sought the child's best interests. There was a mixed response to the issue of who should deal with the conflict if it did arise. Some officers felt that it was part of their duty to the child to address the conflict, others felt that the responsibility lay

with the parents or the court. An example of a conflict was given as where the parents felt that to have one child each would be the fairest arrangement as it was the most just between them as parents. There was also a feeling that the danger of a conflict of interests did not only arise in the contested cases. One of the officers felt that many of the section 41 arrangements were not in the child's best interests, but because they were parental agreements they were accepted by the courts. Again, it was stressed that there was no ideal solution, as the arrangements depended on co-operation.

The solicitors in area one felt that they were either sometimes or always at odds with the child's welfare. This was largely dependent on the client's attitude, and was caused by the fact that the solicitor was instructed by the client. It was felt that, while the solicitors generally tried to point out the conflict to the client, they had to act as instructed, and the child's best interests should be the concern of the court welfare officer. One of the solicitors indicated a feeling that the process of matrimonial law remained a question of winning and losing. As the aspirations of the client would rarely reflect the settlement imposed by the court, the client would often feel they had "lost" something to the other side. The technique used by one of the solicitors to identify the conflict was to suggest that the court would not accept the parents position, or simply to say that the parent was looking for outcomes to suit him- or herself rather than what was best for the child. Generally, throughout the sample, it was felt that the solicitor should act for the client, which would entail advising the client, but the client's desire was the concern of the solicitor. There were enough "safety valves" for the children in the conciliation service and court welfare office, and, ultimately, in the court.

The solicitors felt that the parents sometimes sought outcomes contrary to the child's welfare. It was felt that this was the case in perhaps 5 - 40% of cases.

One solicitor indicated that the client's use of access as a weapon against the other parent was "not at all infrequent", especially when a new partner was allowed to interfere. This solicitor felt that the best interests were, by their very nature, a compromise situation, and this had to be borne in mind when dealing with the cases. It was felt by another, that it was inevitable that, at a time of breakdown, the parent would place personal interests before the child's; inevitable, because of the emotional turmoil in the parent.

The solicitors in area two felt that sometimes their rôle interfered with the child's best interests. However, their duty was to the client. They felt that the conciliation service was one safeguard for the child, with the hope that agreement could be reached by the court hearing, and then by the officers of the court and the judge. It was felt that some, perhaps even as high as 75% of the clients, sought their own interests rather than the child's, especially at first, and that this was a conflict. Again, the court was charged with protecting the child if the negotiation failed.

Do you involve any other professionals in discerning the child's best interests, and, especially, do you use psychological principles and psychologists in understanding the child's welfare?

The solicitors in both areas indicated that they were dependent on the court welfare officers for an assessment of the child's welfare. As has been noted, they did not themselves seek to discern the child's welfare, but the professionals reports as to the child's best interests were invaluable to the preparation of a case, and discussions with the client. Beyond the court welfare office, there was a reluctance to involve other professionals regularly. Perhaps doctors would be approached, or teachers, or independent social workers. However, this was where they had something to contribute to the client's case and not the child's best

interests. In criticism of the court welfare officer, the solicitors generally felt that they were too slow in producing a report, and that the report was sometimes unclear and inconclusive.

As to the use of psychologists in the cases, and the increased use of psychologists in the process of separation generally, there were mixed views. Two of the solicitors indicated a willingness to employ psychologists where the child was emotionally harmed by the separation, or in the most difficult cases. Others indicated that it was not for them to suggest such an action. One solicitor did indicate a willingness to use psychologists to assess the client if certain allegations were made: some of the solicitors suggested that the time taken in preparing a report, effectively ruled out the use of psychologists. Another felt strongly that the child should not be subjected to assessment, and that the case law indicated as such. It was noted by the one of the psychologists interviewed in the preliminary study, that solicitors would seek to involve the psychologist at the court hearing to give an expert opinion that the child would be better placed with his or her client. The psychologist indicated that some were prepared to do this, others felt obliged to accept instruction from one side on the basis that the report and opinion would be completely objective as between the parties.²

As to the increased involvement of psychologists in the understanding and process of separation law, there was a general reluctance on the part of the solicitors in both areas. It was felt by some that they could be involved in the hard cases, or where the child had been psychologically disturbed by the separation. One felt that psychologists should not be involved. Another felt that there was a danger that "a little learning could be a dangerous thing". Another felt that new ideas would be useful in the arena of understanding separation.

The conciliators in area one indicated that they very seldom contacted other

professionals to gain any insight into the child's best interests. Their feeling was that the issue of defining the child's welfare did not concern them, given their rôle in bringing the parents to negotiation. If the parents could not negotiate, they returned to the solicitors and court welfare officers. In area two the conciliators felt that it was not their place to make decisions, that was the parents prerogative. If the conciliation failed, then the other professionals in the system took over.

As to using psychological principles in discerning the child's welfare, two of the area one conciliators indicated that they did not need to do so, one doubting that there were any objective standards that could be discerned. One, however, felt that the process followed vaguely psychological principles, but then did not offer a further explanation. The conciliators also showed a difference in the range of their responses to the principle that psychologists could be involved to a greater extent in the separation and child's best interests process. One felt that it could be of help in other parts of the system, but not in conciliation. The other conciliators felt that there should not be any extension. One felt that conciliation concerned finding practical agreements in separation, while the other was worried for the whole system, in that it was felt that there could be no scientific answers to the question of the welfare of the child.

In area two, the conciliators were vehement in their statement of the principle that as conciliators their rôle did not include this: they should never investigate, let alone use psychological assessments. One indicated that in "extremely bizarre" cases the use of psychological help might be suggested. Another felt that, on this issue, the conciliators should "keep off the grass". Another conciliator indicated, on the issue of involving psychologists generally: "We know what the child's best interests are. If, from the child's point of view, they cannot be realized, psychologists may be useful later, but not as a

run-of-the-mill process". Another felt that more psychological input may be useful, as sometimes it was "impossible to know what the child wants". These two conciliators were the only two who saw a possible involvement for psychologists. However, it is difficult to reconcile their answers with their earlier answers concerning the undesirability of including psychological techniques in the mediation process.

The court welfare officers of area one indicated that they were prepared to involve other professionals in determining the child's best interests, for example, an educational psychologist. Some indicated that they would be reluctant to involve professionals who had not been involved in the issue of the separation before. The job of the court welfare office to investigate made them apparently more willing to address the issue of the needs of the child.

As to the involvement of psychologists and psychological techniques, there was again a general reluctance to employ them with "normal" children. However, when the child had behavioural difficulties, then the officers were willing. As with the solicitors and conciliators, none of the court welfare team used specific psychological assessments. The idea of "normal" and "difficult" children was also shared throughout the professionals. It was indicated that parents could be reluctant to allow their child to go to a psychologist, seeing the reference as indicating that there was something "wrong" with their child. The stigma was perhaps shared by the professionals, who were very negative generally about the involvement of the discipline of psychology. The court welfare officers, when asked about the potential for involving psychologists to a greater extent, indicated that, again, this may only be useful in the "hard" case. It was also felt, by one of the officers, that psychology reports could be confused, and the court could be blinded by the apparent expertise of the psychologist. One of the officers felt that counselling would be a less loaded term, and that counselling

may help a separation situation.

The court welfare officers of area two indicated that they sometimes initiated a report from other professionals, especially if the court had ordered them. However, they generally felt that other professional opinions should only be sought in the very difficult cases, for example, where the child was psychologically disturbed. The officers indicated that they had some basic psychological understanding from their initial training, and for the small number of cases where it would be of further use, it was not worth further training them. There was a feeling that there were "enough experts already involved", and that the model of systemic family therapy was a sufficient tool for helping the majority of parents to reach an agreement. However, one of the officers felt that there would be some value in more input from psychologists in the training of officers, to give a greater theoretical underpinning to the family therapy model.

Throughout the sample, it could be seen that psychologists were viewed as professionals for serious problems, with very little to contribute to the "normal" separation case. The input of psychologists was felt to be of limited use by the majority, even at the training stage for the individuals. As one court welfare officer indicated: "Don't suppose divorce is abnormal, this almost confers abnormality on the child". This attitude was widely held, and indicates a certain understanding of the rôle of the professional in separation cases. Certainly for psychologist, and probably for all professionals, the reaction indicates a settlement-orientation to the professional's involvement. The psychologist's help is seen as only relevant to the decisions concerning the difficult cases. While the language of the professionals throughout the sample is one of negotiation, this question perhaps most vividly reflects the underlying impetus of the whole system to find settlements or arrangements. Success is measured in both the investigative and the negotiation models in terms of a case reaching a conclusion

which is a set of defined arrangements. In the "normal" cases, those parents able to use mediation will make their own arrangements for the children, and the remainder of the families who fail in mediation will be investigated, and a settlement will be imposed by the court. There is no need in a settlement-oriented process for professionals whose concern goes beyond the production of settlements.

Does the law create an unacceptable tension in insisting on the paramountcy of the child's best interests?

As a final question in the section on the practice of the professionals in relation to the child's welfare, the professionals were asked to opine as to the legal paramountcy of the best interests of the child. It will already have been noted that some of the sample indicated that the concept of the child's best interests indicated that there was a supposed absolute standard of parenting - a best case - and that this gave parents a goal which they would always fail to achieve.

The conciliators in area one were split in their opinion. Two felt that the law was correct: "If parents have children", suggested one of the conciliators, "that creates an additional responsibility for them whether they wish it or not". The other conciliator who expressed an opinion, felt that the child's best interests were not accessible as a concept, and the parents had to work with more manageable, tangible, issues such as access.

The conciliators in area two felt that tension was inevitable and not necessarily bad. One felt: "Putting the emphasis on the interests of the child emphasises the parenting rôle and may help to direct parents away from their own personal interests, or conflict with each other". Another indicated that: "Parents can look

after themselves, or find help. Children need the protection of the law and other people, which they cannot obtain for themselves". One exasperated respondent opined on the law's placing the children first: "I only wish I felt it did!"

The court welfare officers of area one all felt that the law was adequate. The tension was felt to be inevitable, but it was felt that the child had to come first, as the child could be a victim of the parents' actions, and could well suffer. Another indicated that it was the only "healthy approach to take", as perfection was not attainable. The other officers felt that the law was correct, but was dependent upon the manner in which it was applied: the practice should not seek ideals which would not work. One of the officers felt that the child's welfare had to be the legal focus, as the alternative was justice between the parents, which blurred the needs of children in separating families.

The court welfare officers of area two indicated that there was tension in the separation process, but that it was not undesirable, and the object of the law was to move towards the child's best interests. One of the officers suggested that it was not the law, but society which caused the tension. Tension, the officer indicated, was a result of the guilt and failure surrounding separation created by society. It was felt that the children were not powerful in the separation situation, and therefore it was correct to focus on them.

The solicitors in area one felt that the law was adequate. As one of them indicated: "Obviously the child's welfare is most important, but then one has to look at what is practically available". One indicated that the alternative was not to separate, and not to have relationship problems. One of the solicitors felt that it was not the law, but litigation which created the undesirable tension, making the answer harder to find.

In area two, the solicitors felt that the law was correct. One asked: "What other test would you suggest?" Another indicated that the law provided for resolution of problems, and was very keen to stress that it was the parents, and not the lawyers, who argued.

iii. the professionals understanding of the child's best interests.

The remainder of the questionnaire and interview concentrated on establishing how the professionals defined the child's best interests. This entailed a set of statements based on a variety of important elements of case law, which the professionals were invited to rate in terms of their agreement or disagreement with the statement. A second question concerned the professionals views of the importance of various elements which were used by social workers in assessing the needs of the child in care cases. The third question invited the professionals to indicate the characteristics which they would look for in the child to assess the child's best interests. Other questions were posed around the three central questions. The intention was to establish whether the professionals used a theoretical and systematic understanding of the child's best interests, or whether the responses were essentially intuitive. If there was an identifiable theory of the child's welfare, the questions were intended to be open enough to allow the professionals to name and explain their belief structure.

Statements from the case law.

A full table of the results is given in appendix A-4.

The analysis of the questions presented here indicates the general feeling of the professionals on each question, and then any significant deviation from that

general expression. Also included are any comments by way of explanation made by the professionals during the interview. Here, the comments are drawn from the positive and negative responses. There are many neutral responses by the professionals, which will be discussed later.

a. The parents are best placed to decide their child's future circumstances.

Generally, all the professionals either strongly agreed or agreed (1 or 2) with this statement. Only one solicitor indicated disagreement (4), on the basis that the parents' emotional turmoil interfered with their judgement. One of the court welfare officers felt that the parents needed to be "helped through the hurt to make their decision". Another officer felt that there was a danger that "at divorce the parents can't see the wood for the trees - anger gets in their way". One of the conciliators felt that the parents did not always aim at a settlement, and the degree of parental freedom to decide for the child should reflect the age and maturity of the child to decide for him- or herself.

b. The individual circumstances of the child and its family should be examined in detail to find the child's best interests and the capabilities of each parent for future care giving.

This received a generally positive response in area one, although two professionals (one court welfare officer and one conciliator) strongly disagreed with the statement. Similarly, in area two the sample was generally positive but with 2 negative conciliator responses. The court welfare officers indicated that if the parents could not agree, then there was a strong duty to examine the child's best future. The same was felt by the conciliators who indicated that the negotiation should concern the possible practical solutions to the problems, and that, if not, the welfare officers should make an investigation for the court. The

solicitors generally felt that the investigation should be made. Some of the professionals in all the groups indicated that where the parents were in agreement, then there should be no investigation. Others felt that the negotiation should encourage the parents to explore the child's circumstances. The non-intervention in agreed situations was voiced by one solicitor: "If there is an agreement, why hold the proceedings up with investigation?" The two professionals from area one who disagreed with the statement took this attitude onto a theoretical level. There was no justification, in their eyes, for an investigative process, as the key was in empowering the parents to assert their parental responsibility.

c. The role of the lawyers in matrimonial disputes concerning children should be to ascertain the wishes of their clients.

In area one, this, surprisingly, gained scores of 3, 4, and 5 from the solicitors, who felt that there was a need to keep the child's interests as part of their focus. They indicated that, while the duty of the solicitor was to the client, and that in court many indicated that the child's interests would be the concern of the court welfare officer, the child's interests would be a concern of the lawyers during the negotiation stage of the process. The conciliators indicated that they agreed with such a definition of the lawyer's work. The court welfare team indicated a diversity of opinion. One strongly disagreed, feeling the lawyer's focus should be on the child as well as the client, another strongly agreed with the statement unless the child was endangered by such a position. In area two the response was mixed throughout the sample.

d. There are objective standards that each child should enjoy, and these are its "best interests".

This statement was greeted in two ways. Three of area one's sample felt that there were objective standards which the child could enjoy, and indicated that these concerned the basic rights of care, shelter and "love". The remainder of the sample in area one, while agreeing with this to some extent, felt that the "best interests" concerned a more sophisticated set of values, and these were subjective to each family and should not be judged. Area two showed a general disagreement with the statement. They were generally convinced that, beyond very basic issues, the "best interests of a child" were largely subjective beliefs.

e. The mother has abilities that make her best suited to the role of carer of the child.

In the court welfare team and the conciliation service of area one, this was met with universal disagreement, either rated 4 or 5. There was a feeling that both parents could offer the child the same care. One of the court welfare team indicated that: "After breast feeding, the parenting was the same". One officer, however, indicated that a baby should be with its mother and that this was an important *caveat*. The solicitors showed a different approach. One disagreed strongly, but the remainder indicated a mild agreement with the principle. It was very difficult to tell whether or not this was a theoretical stance, or whether the experience of the fathers' attitudes to child-care in their areas led to the conclusion. The former was certainly the case for some of the sample. This statement was met with general disagreement in area two, with one conciliator and one court welfare agreeing.

f. The child will be best placed with other siblings.

The conciliators and one of the court welfare officers in area one showed a

feeling that this may not always be the case, and that the question depended on the age and relationship of the siblings. The remainder of the sample showed a mild agreement with the principle, some suggesting that it would depend on the age and maturity of the children, and others highlighting that this may be an ideal case which could not be achieved every time. Three of the solicitors strongly agreed with the principle of keeping siblings together. In area two the sample was generally positive towards the statement, except for one solicitor who expressed the negative view.

g. A child should be shielded from its parents' arguments, as this will shield it from harm.

The sample showed a great deal of neutrality on this point. Of those who expressed an opinion in area one, two court welfare officers and one conciliator disagreed with the statement, and two solicitors agreed with the statement. One of the welfare officers indicated that the child should be shielded from the destructive arguments of the parents, and certainly from any violence. There was a general feeling that the child would be aware of the adults' separation, and that the parents could not shield the child. In practice this was a matter without an ideal solution. In area two the response was positive but for three conciliators and one welfare officer who disagreed.

h. A child should not be consulted in the parents' separation process: it is happiest when it is told simply where it will live and what will happen.

This question produced a greater negative response in all the area one sample, but two solicitors agreed with the principle. The majority view seemed to be that delaying talking to the children until the parents had agreed a settlement would be detrimental to the child. Children were perceptive and could interpret the

situation, probably with a vivid and dark imagination of what was going to happen and why. There was also a danger that there could be a sudden loss to the child of both of one of the parents, and of the family life generally, if the child was simply told what was to happen. On the other hand, it was stressed by the two solicitors that the child should not be placed into a position where he or she felt responsible for the decision which was made. Clearly, generally it was also stressed the age and maturity of the child would be determining factors in their involvement and the weight to be placed on their opinions. In area two the responses throughout were mixed.

i. As soon as the child is able to express itself, its views are crucial in determining its best interests.

Feeling was again split over this statement in both areas. In area one, all the court welfare officers, those in the system talking to and listening to the children, agreed (2) and strongly agreed (1) with the statement. Again, the fact that they should not determine the outcome was felt to be crucial, but it was agreed that the children's views should be heard. Two conciliators found that they could not respond, conciliation concerning adult discussions and not the children. One conciliator did disagree with the statement, as it was felt that the child tends to want the parents to stay together, and will say what he or she feels the parents want to hear to bring them back together. The solicitors were split as to the involvement of the child: two indicating agreement with the statement and one indicating disagreement, the other three remaining neutral.

In the responses concerning the child's views, the professionals had accepted the findings of the studies of the effects of separation on children, and were aware of the potential dangers to the child in making him or her feel as though they had made the decision for the adults.

j. It is better for the child to see the visiting parent for a more frequent number of short periods, than to have longer periods of staying access at intervals.

On this point, the overwhelming response was neutrality in both areas. Four professionals in area one agreed, and one disagreed with the principle; in area two, six agreed and one disagreed. It was generally felt that the crucial elements of access were the child's age and development, and the nature of the interaction between the child and the parents. It was also felt that access was another area where the ideal situation very soon gave way to the realities of what the parents would allow, accept, and practice.

k. Splitting the siblings may not necessarily damage the children.

In area one, one solicitor, one court welfare officer, and one conciliator agreed with the statement. Four solicitors, two welfare officers, and one conciliator disagreed. The consensus however between the views was that, while it might or might not harm the children, it was undesirable to separate siblings, and the attempt should be made to keep the bond. Again, the determinants were the age and relationships of the children. In area two the response was generally positive.

l. A young girl is better off with her natural mother, but a boy may be better placed with his father.

In area one, the court welfare officers showed universal disagreement with this statement. The conciliators likewise showed disagreement. However, the solicitors divided on the issue. Two disagreed, but one agreed. Again the feeling was that it depended upon the circumstances. In area two, the response was a more general

disagreement.

m. The rôle of the father can adequately be fulfilled by access visits.

This statement was largely rejected in area one. Only one of the professionals, a solicitor, agreed with the principle. The remainder of the professionals expressing a preference indicated that the father needed to have a greater involvement in the life of the child. The nature of that involvement depended upon the age of the child and the circumstances of the family. In area two, the same rejection of the statement was generally seen.

n. Access should be designed so as to fit the parents new lifestyles. If this entails irregular or unreliable visiting, or no visiting at all, then that is for the parents to decide.

This presented an interesting split between the professionals in area one. The court welfare officers and the conciliators disagreed with the statement. The solicitors however, split on the issue: two disagreeing, and three agreeing. Those who agreed felt that the parents could not be forced to have access, and, indeed, the access had to fit in with the new arrangements. The opposing view felt that it was part of the parents duty to focus the provision of access on the child's needs. In area two the response was generally negative, with two conciliators and one welfare officer agreeing. One of the conciliators opined that the child's best interests do not necessarily mean the destruction of the parents lifestyles.

o. A new partner for either spouse may make a clean break with the other most desirable in the best interests of the child.

This statement was met with universal disagreement from all the groups. The only

situation where this would be acceptable, it was suggested by one court welfare officer, was where the other parent's reaction was damaging the child, and then it depended on the bonds between the parents and the child. Interestingly, none of the sample raised the issue of the teen-age parents which they had previously indicated.

p. The new partner should be seen by the court to determine their suitability in meeting the best interests of the child.

All the court welfare officers agreed with this principle in this part of the study (in comparison with their responses earlier in question 4-4) in area one. In area two their responses were mixed. All the conciliators disagreed with the statement. The solicitors divided, exactly equally, five agreeing and five disagreeing. This perhaps indicated most strongly the difference between the responses of those following an investigative model, and those accepting the negotiation model. For the former, the new partner would figure largely in the child's future and therefore should be part of the information brought to the court for its consideration. For the latter, the parents could discuss and resolve their concerns about new partners in the negotiation sessions. It will be noted that many of the respondents indicated that the presence of a new partner could seriously upset the post-separation arrangements, and that it was a source of emotional upset for many spouses which interfered with their ability to discuss the situation dispassionately.

q. A father who develops a strong relationship with another woman may be better placed to meet the child's best interests than a father who remains single.

The court welfare officers of both areas all disagreed with this statement, as did the conciliators. The solicitors split over the statement: four agreed with the

statement, and two disagreed in area one, whilst one agreed and two disagreed in area two. One of the solicitors and one of the court welfare officers indicated that the important consideration was the character of the individuals.

r. Maintaining relationships that have developed with the child is crucial to its best interests.

In area one, all the solicitors and conciliators, and all but one of the court welfare officers agreed, mostly strongly, with this statement. The other court welfare officer disagreed, but gave no indication as to why. In area two, all the responses were positive.

s. Custody with the mother should never be presumed: the decision must be examined on the grounds of the future ability to care for the child to the highest available standard.

The area one solicitors all agreed with this statement, with one neutral response, however, they indicated that they felt that the courts tended to favour custody to the mother. A similar response was made by the court welfare officers. All agreed, but one felt that the courts were "pro-mother". The conciliators again all agreed strongly, pointed out the issue of who was able to make the value judgement as between the parents, and on what basis would the decision be made. In area two, the response was positive (with only one neutral response).

t. Religious disputes between the parents should only effect the custody or access decisions when the child is in real physical danger.

In area one, it was felt that the statement was correct. Two professionals indicated, however, that there may be deeper issues which affected the child's

welfare due to the strains which a conflict of religion could bring between the parents, and therefore for the child. In area two the responses were mixed, although a larger proportion agreed with the statement than disagreed.

u. Access is the right of the child and therefore cannot be decided on whether or not one party will see the other; the parents should not be allowed to use access as a weapon against each other.

This was universally accepted without comment.

v. The conduct of the parties is important in determining the arrangements for the child.

There was some confusion over the exact meaning of this question. "Conduct" was intended to be in the same sense as in divorce - the adultery or behaviour on which the divorce was founded. When that definition was taken, the professionals generally felt that it was irrelevant, and that justice between the parties was not at issue. However, two of the sample disagreed with this as justice was a crucial part of the parents pursuit of the case to the court. When "conduct" was taken to mean the behaviour of the parties over the separation - the conduct of the negotiation or the access - this was felt to be of great importance to the issue of providing the child's best interests.

w. A child can very quickly adjust to the stress of divorce and separation.

All but one of the court welfare officers disagreed, five of them strongly, with this statement. The effects could be lasting and difficult to manage, and all depended on the child and the parents' attitude. The conciliators also generally disagreed with this statement. The solicitors showed a split of opinion: two of

them feeling that most children could recover pretty quickly from the separation, but six of them disagreeing.

x. It may be in the best interests of the child to explore the use of supervision orders or care as options in custody and access disputes.

The court welfare officers and the solicitors largely accepted the possibility of exploring care or supervision as a possible outcome for the most difficult cases, possibly because they were accustomed to dealing with the most intractable access cases, or families already in the care system before the separation issues emerged. The conciliators on the other hand did not feel that the measures were appropriate for separation law, possibly because they did not see the most difficult families who tended to refuse to attend conciliation.

y. Divorce is a period of changing relationships for all members of the family; the system must therefore look to providing help for the future welfare of all participants and not just of the children.

There was general agreement for this statement, and a desire to understand separation in a wider context than the decision oriented legal process. It was admitted that within the legal process there was not time to undertake a therapeutic approach to the separation, or to undertake on-going work.

z. The paramountcy principle of the child's welfare does not allow for the reality of the divorce settlement to be addressed, which is more concerned with property and financial arrangements between adults.

The most unsuccessful of the statements, this was felt to be too difficult to answer in terms of agree or disagree. Either the responses tended to be neutral or

the professionals indicated disagreement with the statement on the grounds that the children part concentrated on the child's interests. It was felt by one of the court welfare officers that if the financial arrangements were sorted out first, the issue of the child would be a lot easier. This assumes, however, that the problems are problems of the facts or the division of property, with money being a higher stake. An alternative view would be that the parents find different issues to use as the language of a deeper conflict which goes to the heart of their emotional separation as partners. If the money was resolved, and the emotions were unresolved, surely the danger would be that as the last battle, the children issues could become even more heated?

Comment.

It will be noted that the range of answers was diverse on nearly all the questions. This points to a lack of a coherent theory of child welfare in either law or practice. Further, it will be noted from the full list of answers in Appendix A-4, that there were a number of neutral returns. Part of the explanation for these two findings may be in the division of the sample between the investigative and the negotiation model. Where the focus of the meetings is to enable the parents to make decisions concerning the child's future, the answers will not allow for a professional assessment of the needs - quite the reverse of the investigative model.

The effect of the negotiation model on the professional's definition of the child's welfare can also account for the many neutral returns. Some of the conciliators and solicitors felt that their rôle did not include the consideration of the welfare of the child, as they were engaged in negotiation with the parents, and thus, the response returned was neutral (3), indicating no opinion relevant to the process. While the scientific value of the statements is not high - the

statements often showed more than one possible response from the same professional depending on the stress placed on the question -, there was an indication that none, or very few, of the professionals had a theoretical understanding of the child's best interests. The responses seemed to be largely intuitive, or based on "experience" or "practice", and not found in a coherent theory of the needs of the children. This follows the findings in the first part as to the training given to the professionals.

An alternative analysis of the large number of neutral responses would be that the professionals gave no opinion as they did not have a coherent understanding of the child's best interests. This is supported by the many references to intuition in the other responses in the study. As between the two analyses, there was probably a mixture of both reasons for the number of neutral answers. It was felt that the responses were largely intuitive, and not based on a theory of child development - a feeling which many of the professionals accepted to be the case.

Elements of the child's best interests.

The next question invited the professionals to place a set of elements based on issues which social workers examined in trying to establish the needs of the child into some sort of order of importance.³ There were twenty characteristics, and the professionals were asked to rate them where 1 = very important, 3 = neutral, 5 = irrelevant. Again the detailed findings are given in appendix A-4. The purpose was to invite the professionals to show whether they held a theoretical or merely intuitive response to questions, indicating either a theoretical or intuitive understanding of the child's best interests.

It will be noted from the responses that they are largely without a coherent pattern. Also many of the responses were that each characteristic was very

important. It will be noted that, while throughout the rest of the questionnaire and interview, the professionals offered comment on their beliefs and theories, here they were fairly silent. Their only comments were "these are my own personal views". Further, it will be seen that in the responses to the question inviting the professionals to indicate the characteristics which they look for in assessing the child's welfare, there was once again an incoherent set of responses, and no theory of welfare was mentioned. In the answers to the elements question, it will be noted that the professionals accepted many of the terms, for example "love", "bonding", "praise", and "discipline", without any attempt to either explain what was meant by the term, or - which was more surprising - without any reference to the wide ranging and imprecise concept which was being suggested (by the question). This is very similar to the difficulty posed by the whole issue of the thesis.

Terminology such as the "child's best interests", "love", "mother-child bonding", "attachment", is only useful when it indicates a received set of information: a shared understanding. Thus, one response that could be expected from those engaged in understanding terms such as "the child's best interests" would be to draw references from the shared pool of knowledge in order to explain their position. A second approach would be that when presented with attractive concepts such as those listed above, or the child's welfare, subjective opinion can "latch onto" an apparently objective term. The sample showed, by their inability to define the elements with any reference to shared understanding, that their use of the terms was this second, subjective one. Some of the responses scored consistently highly, but then that is to be expected with concepts such as "love". This question showed very clearly not only the subjective views of the sample, but most importantly that the vast majority of the professionals, who are trying to understand the child's best interests, do not have any objective knowledge to develop the theory, and certainly do not share a common

understanding.

Concern was expressed by some of the professionals that the allocation of the rate to the elements was a value judgement from the subjective system of the professional, and that the child's best interests, in terms of their content, were the concern only of the parents: the professionals had no moral entitlement to place a value on different aspects of the interests of another parent's child. The courts alone had that power if the professionals could not bring the parties to a mutual agreement. It was felt by one of the solicitors that this respect for the parents' interpretation of their child's best interests was part of the human right to a family, and that the only objective standards were the basic necessities of life. One of the conciliators indicated that the judgement would be made as to the child's needs, not to punish the parents, but to help them to provide certain elements if the parents wanted to accept the help.

Are any of these elements gender specific?

The professionals were asked to indicate if they felt that any of the elements in the previous question were gender specific. All the professionals indicated that there was no difference between the genders in an ability to provide for the child's needs. It was pointed out that in the individual case, the settlement for the child's best interests would have to consider which of the parents had given the care previously, and the situation which was happening at the time of the professionals' involvement. One of the court welfare officers felt that the mother was usually more physically affectionate. Further, one of the solicitors felt that the mother was usually best for the physical care of an infant, and, indeed, another indicated that in practice the mother usually provided most of the care. It was felt that access was the difficult question, custody was usually obvious.

What characteristics do you look for when assessing the child's best interests? Do you have a checklist which you use in practice?

The conciliators in area one stressed that they did not assess the child's best interests, their service provided an opportunity for the adults to negotiate a settlement. The child's best interests, for the conciliators, lay in the parents agreeing a settlement. One conciliator indicated what was being sought: "The parents' ability to talk to each other and the child without blame and bitterness. To move forward; always allowing time to listen". They also indicated that they did not have a checklist of issues which were in the child's best interests which they would use to prompt the parents in the discussion (they indicated above that the child's best interests were a catalyst for the discussion). However, they indicated that such a mental list might be valuable in facilitating the discussion around the needs of the child.

In area two, the conciliators indicated that they looked for a variety of characteristics. Among those indicated were: continuity of attachments; "a home which can provide loving relationships, stability, respect for the child's feelings and desires, together with basic material comforts and intellectual stimulation"; acceptance of the child as a person and not a projection of the parents; love; ability to promote the child's social skills and self-worth; willingness to spend time with the child, and to tolerate the child; ability to communicate with the child; and a willingness "to let go". None of the conciliators used a checklist, although one felt it might "help to clarify hunches and gut feelings".

The court welfare officers in area one indicated that they did look for the child's best interests. One indicated that there was nothing more than the principles already indicated in the study. The child's best interests would be

seen in characteristics such as the child looking happy and contented; curiosity; showing affection; achieving its potential. Another indicated that the characteristics the officer would look out for would be warmth; consistency; general stability; ability to communicate with the child; ability of working towards a similar level of parenting as before the separation. Another indicated that two more characteristics were important: where does the child feel more at home? - and whether the situation will continue. One of the other officers indicated that attachments were very important in the child's best interests.

As to a checklist, the officers indicated that they had used written checklists at the start of their careers, but now the issues were internalized, and had become more sophisticated than a simple checklist. The checklist gave structure, even if they would not use a written form.

The officers in area two indicated a variety of characteristics which they looked for in the child. They looked to the child's behaviour and actions; how the child related to others, and especially the parent-child relationship; a positive self image; confidence in loving relationships with a wide range of adults and children; good access arrangements; appropriate physical facilities; an absence of indicators of severe depression or disturbance; and contact with the broader family. The officers felt that they had an internal agenda for the interests of the child.

Two of the area one solicitors indicated that the characteristics they looked for when trying to discern the child's best interests were an ability to cope with the child on a day-to-day basis and provide a good home, and an assessment of where the child would be happy; an environment of happiness with the best environment to grow up in and achieve his or her potential. Another of the solicitors indicated that a lot depends on who has taken care of the child in the past, and

who has care of the child at the present and what future potential they could offer. The other solicitors felt that they did not consider the child's best interests as it was not their job, but rather for the court welfare officer.

In area two, the solicitors indicated, that they did not assess the child's welfare: they acted for the parents and presented their case, not the child's. Two indicated that they would feel the following elements were important in assessing the child's welfare: caring attitude; a consistent approach; reliability; love; stimulation; and economic stability. One of the solicitors felt that the issue was not about the child's welfare, but the assessment should concern the characteristics of the parents.

The solicitors all indicated that they do not follow a checklist. This question was answered with a number of statements concerning the rôle of the solicitor. One indicated that "my rôle is primarily to represent the parent. If the child requires representation then the court has power to appoint a representative". Another indicated that when "gearing up for the court battle you are no longer looking at the child's best interests". Concerning the child's interests one solicitor indicated that "one usually gets a gut feeling which is just as good as a checklist". Another felt, concerning assessing the child's interests, that "as an outsider you can't 'score' some one. You must know them intimately and even then it would be difficult". Another felt that the client would "show you the side they want to show you, not the day-to-day side or the side under pressure".

In area two, one of the solicitors made an interesting observation about the checklist: "At the end of the day, judges decide. Unless the solicitors use a similar checklist there is no point in using one at all. Also, how should distinction be made between elements on a checklist?" The interesting point is that the logical conclusion to this line of argument is that the whole process

should follow a standard approach to the child's best interests. Further, it has been noted that the case law indicates a lack of a coherent judicial theory of the concept of the child's best interests.

Do you or the law ever find arrangements in the child's best interests?

All the professionals indicated that they felt both they and the law sometimes arrived at a solution which was in the child's best interests. One of the court welfare officers felt that the law succeeded in finding the child's best interests when it accepted the parents perception of the proceedings. Another officer indicated that the success of the process depended on the parents response to the intervention of the professionals.

In area two the court welfare officers felt that the law sometimes found the child's best interests, but also it sometimes got in the way. One officer indicated that: "It often did quite well with minor disputes, but has an impossible task, as they cannot order happiness. It was felt by another that the amendments to the law had been careful and child-centred. Another officer indicated that: "Therapeutic investigation can move families on in the process of change, so long as the officers succeed in engaging with people's relationships and their feelings".

One of the area one conciliators indicated that if the process was properly conducted, allowing people to feel that they had been heard, the process could work. Another indicated that the law gave the approval most parents sought, therefore giving some security and protection. The conciliators indicated that any personal success at promoting the child's best interests came from emphasising the on-going nature of parenthood, and encouraging the parents to talk.

The conciliators of area two indicated that the law sometimes arrived at the child's best interests. One indicated that difficulties arose when legal jargon intervenes in a case, and noted how strong a solicitors' recommendations and advice were in the mind of clients. Another indicated that a major problem arose because the law insisted that fault was found in divorce cases. It is difficult to tell, however, whether it is the law that creates the problems over the feelings of fault. The Law Commission's proposals on the grounds for divorce⁴ indicates a similar belief, that the law causes conflicts by insisting on finding fault in a divorce. However, it could be argued that divorce, and separation generally, concerns emotions, and only in a very small number of cases does anger over the words of the petition cause separation conflict. The reality may well be that the words and terms of the law, as in the case of custody and access, and residence and contact orders, are simply the vocabulary with which the parents voice their separation conflict. This is discussed further in the conclusion.⁵

One of the conciliators in area two indicated: "Law is, or ought to be, a last resort - it is at best a compromise which all parties may quickly find that they cannot live with". Another said: "I've been impressed with some decisions, but I think the way of meeting them (the solicitor and barrister idiots) needs to be changed".

As to their own ability to reach the child's best interests, the conciliators of area two were the most forthcoming of the sample. One indicated: "The rôle is to help parents reach the best decision. With a minority of parents, hatred, animosity, and vindictiveness cannot be put aside, even in the child's best interests, hence we are 'unsuccessful'. Sometimes it is possible to make short-term contracts - frequently reviewed - which are often made redundant by changes in circumstances, e.g. new relationships". Another said: "I wish I was perfect. Sometimes parents opt out - parents needs have to be accommodated too.

But it's not a perfect world!"

One of the solicitors in area one indicated that any solution was often better for the child than mayhem, but that the law was very often an inadequate device to reach a settlement. Another solicitor suggested that it was important not to overestimate the importance of the law. Most of the solutions, it was felt, were the work of the parents. As to their personal ability to help to find the child's best interests, one indicated that it could be in counselling the client, but another indicated that the solicitor had no knowledge of the success of many of the cases, as the child was not seen in the future.

All the solicitors in area two felt that the law tried to establish the child's best interests, but that this was only sometimes achieved. It was felt to be a criticism of the law's efficiency in achieving the child's best interests that the court welfare officer was not sufficient to protect the child's welfare in court anymore, since their rôle had become blurred by mediation in recent years. Another solicitor felt that law was not the problem, the need was to "un-blinker the parents".

By way of comment generally at the end of the questionnaire, two conciliators added:

"In an ideal world, the child's best interests would be to have two parents who could co-operate in sharing the parenting after separation. Unfortunately, sometimes one or both of the parents are so emotionally affected by the separation that they seem unable to achieve this - often one, or both, does not even feel that it is desirable. In such cases compromise decisions have to be made."

"The important thing is happiness: happiness is a series of states or conditions like pearls on a string. The best string is when parents and child live together. The separation situation means finding a new string with the most pearls".

1. Lord Scarman, *Gillick*, p 184: the standard of all parenting actions should be, as of right for the child, the child's best interests.
2. See *Psychologist 2*, Preliminary interviews, Appendix A.1.
3. The concepts were drawn from ideas in the two books: Adcock and White (1985); Fahlberg (1982).
4. Law Com. No. 192, (1990).
5. Part 3.3, *infra*, p.³⁴⁶~~000~~

PART THREE: THE PRACTICE OF SEPARATION LAW.

3.3 *CONCLUSIONS.*

The lack of a theoretical understanding of the child's best interests.

The unsystematic provision of training.

The dangers of the negotiated settlement.

Models of practice.

Conflict of parents and the conflict of partners.

An alternative model.

3.3 CONCLUSIONS.

There are a number of issues which should be drawn out at the conclusion of this part of the work. Many conclusions are contained in the discussion within the report of the empirical study, and will not be reiterated. The following general observations could be seen as the major themes from the results of the empirical study.

The lack of a theoretical understanding of the child's best interests.

It can be seen from the empirical study that there are two approaches to the professional work in separation law. First, there are those who disagree with the concept of imposing a judgement, on the family, of what is best for the child. These professionals tend to indicate that the proper process of the law is to allow the parents to decide the child's welfare, the assumption being that the parents can, in the main, make those decisions. Essentially, this group do not need to have a concept of the child's best interests, as they ask a separate question of the parents: what should happen to your children?

The second view is that the law must impose a settlement on those parents who do not agree for themselves, and this settlement should focus on the children. The indication is that there are some solicitors, and a greater number of members of the court welfare team who believe that they should look to present the child's welfare to the court. However, the general view is that if the parents cannot agree, then the court is the body empowered to make the decision. Generally,

neither set of professionals would claim any authority to impose a definition of the child's best interests on a case.

It will be noted, however, that the vast majority of the professionals indicate that they feel a duty to consider the child's best interests. Most indicate that if the parents agree a peculiar settlement then they should point out the "difficulty" to them. The reality that is suggested from the study, and which fits with the studies of Davis, and Dingwall and Greatbatch,¹ is that the professionals intervene in the process of the parents negotiation to "focus on the child's best interests". Equally, this study would indicate that the professionals have very little initial training on the meaning of the child's best interests, they do not address the issue in their on-going training, and base their understanding of the term on intuition and the weight of experience in practice. The implication of this is very great. There is a strong intervention by the professionals, which influences the outcome of both mediation and court hearings, and yet the intervention is based on a concept which has no formal meaning in the law or in practice.

One of the crucial questions arising from the study, therefore, is: "If the law insists on the concept of the paramountcy of the child's best interests, is it possible to define the concept in a more systematic manner than "hunches and gut feelings"?"

The unsystematic provision of training.

It was seen in the first part of the report of the study that there is no coherent training for the professionals. It is worth reiterating that the study showed that the initial training does not reflect, in the views of many of the professionals,

the needs of the job. Neither does it give a theoretical understanding of the key concepts involved in the work - especially the child's welfare, and the issues of intervention. The in-service, or on-going, training equally does not explore these with all the professionals. Indeed, it could be argued that, because the professionals themselves set the agenda for training, the content of the training does not give a rounded approach for the professionals. The danger is that the issues addressed are the popular issues, and the difficult, theoretical issues are not addressed. Even if they are, because there is no national training programme, not only is the range of issues which are pertinent to the training of a separation professional not defined, but geographical differences emerge in the standard of practice. The need for a central Commission to draw together the work which is being undertaken already, and to produce a coherent, national training and theory programme for separation professional is very great. Such a Commission will be further considered in the next part of the thesis.²

The dangers of the negotiated settlement.

As has been indicated throughout the study and in these conclusions, the negotiated settlement, which claims to empower the parents and to focus on them without imposing the professional's subjective opinion as to the best interests, does not necessarily allow for this. Many of the responses indicate unstructured intervention, without the safeguards of the processes employed in the courts.

Models of practice.

As has been indicated there are three models of practice which can be seen in the study. The models identified are the investigative model, the negotiation (or

mediation) model, and the therapy model. The difficulties stemming from the models are first outlined and then an alternative is suggested below.

The conflict of parents and the conflict of partners.

The legal reformers have heralded many of the reforms to the law in a way which suggests that parents have no conflicts until they go to the law, and it is the words which enrage them. This is clearly not the case. The arguments first arise because of the emotional devastation of the partnership coming to an end. The parents seek, in the law, a way of formally ending their relationships - often to move on to new ones, a further cause of tension between the parties - and the law is a vehicle for the conflict.

It is suggested that the reform of the old law relating to custody and access, to the new law of parental responsibility and residence and contact orders, and the removal of fault from the grounds for divorce, may make the law feel better about the semantic implications of custody and access, or of proving adultery, but the parents' reality will not be changed in the vast majority of cases. This is because the law is only a vehicle, or a vocabulary, for the conflict of the parents. The law is not the conflict; it merely provides an opportunity for the parents to express their conflict. In effect, conflict is not who has custody or access, but is the real life question of when the father can see the children, and underlying that, how the parents can come to terms with losing their children, in different ways, whom they love dearly. It is this truth which the law reformers have lost sight of. The anger, frustration, and fear is all real. The law, because it has an authority to impose upon the individual, is perhaps the only social control mechanism which can help the parents and children to understand and cope with these real and traumatic experiences.

When the law changes, the effect may be that some parents are satisfied that they have not lost control of their children, and the conflict is reduced. However, for the majority who have a real and deep conflict about the separation, either the new orders and regulations will remain areas of conflict, or the conflict will be "bottled up" and will find other vehicles of expression. The implication of this is difficult to appreciate, as it will not be apparent for quite some time, and will require a vast amount of work to be undertaken, in the future, with separating parents as the systems change. At least it could be said for the old law that the anger could be channelled onto professionals. If the professionals and the law, having failed to see conflict as necessary, manage to remove conflict from the legal process, it could be left to emerge in the direct situations between the parents, such as contact, with potentially devastating effects. To retain its efficiency as a social control mechanism the law must remain consonant with the experiences of real people. It could be said that the law, including its most recent reforms, has become dissonant with the reality of conflict, and risks becoming irrelevant to the real lives of many.³

It can be seen throughout the responses of the professionals that there are two conflicts going on. On the one hand the parents fight over the details of the arrangements for the children, and that is the focus of the legal process. Whereas at another level, the parents are identified by the professionals as having conflicts about being partners. Essentially, the law indicates that the problem is the children and what is to be done about them. All the professionals indicate a reluctance to discuss with their clients the nature of the partnership. Where it is done, the professionals admit that it is at a very superficial level. This has to be so, as there are neither the time nor the resources to dwell on the problem. The children are seen as problem areas, divorced from the parents separation problems. Indeed, the professionals talk in terms of encouraging the parents to separate the two issues of their parenting and their partnership, and to

concentrate on finding a settlement to the first only. This sets up a fundamental weakness in the mediation or negotiation model.

A therapy model does not exist. Many of the professionals express the wish to move towards a therapy model, however none of the professionals has the time for on-going work. Essentially, the negotiation model claims that it places parents in a position to negotiate in the future. From the study presented above, and from the work of other researchers, it is clear that the negotiation model does not fulfill this ambition. Throughout the study, the conciliators and the court welfare officers indicated that their work was to attempt to allow the parents to meet in a neutral setting and to discuss the future arrangements for their children. Equally, many of these mediators indicated that the parents reached agreements for the short term. Many of the solicitors indicated that when the arrangements failed their clients returned, as did the conciliators and the welfare officers. The conciliators and the court welfare officers consistently argue that they seek to facilitate a dialogue, and do not have the time, or the philosophical inclination, to address the parents communication as a therapy issue. The negotiation focuses on arrangements for the children; the goal is to move the parents from a position of no agreement over the children to parents with a set of arrangements for the future. That is the end of the process of negotiation. If the arrangement fails, the parents have to return to the process; the collapse is seen as a failure of one negotiation and the start of another. Thus, the dialogue which is facilitated is simply the creation of an alternative forum for finding a set of arrangements to the one found in the investigative, court process.

It will be suggested that many couples find a set of arrangements which they can work from, and construct a post-separation dialogue within which they can accommodate changing needs and circumstances. However, it is suggested that

the ability to communicate is not created by the process of mediation. Mediation moves couples who can communicate, from their separation conflicts to a place where their natural ability to communicate is reasserted. This is an excellent outcome which reduces the antagonism experienced by such couples in the adversarial separation process. However, mediation does not help the couples who fail to negotiate with either the conciliators or the welfare officers. Neither does it assist the couple who, having reached an agreement in mediation, have not regained the communication skills to renegotiate and accommodate change in the future. These are the couples who return to the process, or who simply break the links of parenthood. The mediation process, it is suggested, only facilitates those whose relationship is in a state which allows the parents to overcome the separation anger and start to communicate again. It is not a therapy which can move those who are unable to communicate by themselves. Further, it is not the fault of mediation, but rather the relentless push of the process to find answers to such superficial questions as "can the father have access on Friday?" which insists that the mediation can only last for two or three meetings. This means there is no time to begin a deeper process of asking why barriers are constructed against the question of access. However, time and resources, and the philosophy of the law which drives towards settlements (perhaps better described as "contracts"), have locked mediation into the process of separation as a part of the settlement-oriented establishment.

The impetus for the law is based on the law's perception of the problem. Law is concerned with settlements, arrangements, or contracts - statements of positions which can be enforced. There is an element of compromise, but ultimately the law has authority to impose reasonable agreements on individuals, and enforce them when they fail. Thus, the impetus of separation law is that the parents cannot agree their own solution, so the law will impose a reasonable solution. Mediation softens the method by which this is achieved, but essentially it is part of the

same philosophy - the need in the situation is for an arrangement which can be enforced. This position is fatally flawed, however, because the position cannot be enforced in the same way that any other action for contempt can be enforced. If the father and mother fight when contact visits take place, then fines and imprisonment only hurt the child, who is the very reason for the order. The dilemma is stark. The law sees the overwhelming need to assist the parents, and yet does not have the ability to deal with the problem.

An alternative model.

In the study, there was clearly a confusion as to the meaning of the child's best interests and the process for achieving them⁴, and therefore the rôle of the professionals both in the negotiation, and in the preparation of the case for the court hearing. This was complicated by the feeling that the child's best interests were different for each child and each set of circumstances. The indication was very much that the interpretation of the child's best interests was subjective both for the professionals and the parents. This caused the dilemma faced by the vast majority of the sample: how to justify the imposition of their views on the parents. However, the interpretation of the child's best interests adopted in the process of separation law, although without theoretical framework, was consistently one which looked at prescribing practical answers to problems. The child's best interests, while claimed by the professionals to be a matter for the parents, or for the courts, were believed to be an important guiding, or constraining, principle throughout the work of the professionals. Yet, when asked to define the concept, they could not. It was concluded earlier that this was because there was no shared understanding of the concepts: no common framework within which to explore and define the idea.

While in the rest of the questionnaire, the professionals expressed forthright, and often shared, views of the system, on the question of welfare they were relatively unforthcoming. This lack of definition of the child's welfare, it is suggested, was because the ethos of the process of the law is one of finding practical solutions for the parents, and not the "paramountcy of the child's best interests".

The alternative could be a therapy model, or "process approach" to the child's best interests. This will be explored in the next part of the work, but essentially this approach differs from the decision, or settlement-oriented model which has been presented to date in this thesis, in that it concerns the issue of empowerment and ownership⁵ in the process of separation. It also entails an on-going process of separation, rather than a series of decisions which act on snapshots of the situation. Essentially, the process approach accepts at its core that separation is not of the law but is of emotions. In contrast, the approach presented by the professionals and the legal process concerns the primacy of arrangements.

One of the changes in the outlook of the system that is entailed in the alternative approach is the definition of "success". The investigative and negotiation models measure success in terms of a case reaching a conclusion, which is a set of defined arrangements. The alternative approach would suggest that emphasis should not be on arrangements, tempting as this is as a practical aim for the system, but rather the focus of the process should be the communication between the parents: the "success" being the movement from the separation conflict to an ability to make and adapt arrangements for the children. Perhaps a better title for the alternative model is, rather than "process model", *Communication Model*.

Thus, while the mediation or negotiation model sees the end in a dialogue which reaches an arrangement concerning the children, and the collapse of that arrangement as a failure on the part of the parents to implement the settlement, the communication model would see a collapse of the arrangements as a part of the process of learning to communicate. While the negotiation model, despite its claims, in practice views the system as a series of individual decisions, the communication model sees the complex, family relationship as a single, developing, process over time, with situations which work and others which uncover references to emotional difficulties within the parents. This differs slightly from family therapy, as it allows for the difficulties to lie both within the family dynamics, and within the individual family member's psychology.

The approach of the communication model to the issue of the involvement of other professionals, and especially psychologists, would be to encourage participation as the clients see the need to accept their help. Essentially the problems of where the child lives and when the contact is made with the other parent are redefined. Whereas the legal process of investigation and negotiation sees the problem as the children and the end as making arrangements for the children, the communication model sees the problem as the parents ability to communicate with each other, and the end is to allow the parents to find a post-separation relationship in which they can reclaim ownership of the process of making the decisions about their children.

The remainder of the thesis seeks to address the implications of this alternative view, and to ask if psychology has an alternative vocabulary for the solution of the dilemma. Clearly, there are two issues to address in the Communication Model: first, what could be a shared understanding of the child's best interests? - and secondly, what would the implications of such an understanding be for the

process of the law in implementing a Communication Model?

1. ¹⁷⁰
Supra, p. ~~000~~.
2. ³⁷⁷
Infra, p. ~~000~~.
3. ⁷
See Thompson (1991), *supra*, p. ~~000~~.
4. It has been seen throughout this thesis, that the practice of the law could not find a coherent meaning for the child's welfare either in the judgements of cases which go to a court hearing, or in the daily work of negotiation in the preparations for the hearing. The development of conciliation also stands without a theoretical understanding of what the child's welfare is about. Mediation, as a theoretical approach to dispute resolution in separation disputes, holds as one of its standards, like the law, the importance of the child's best interests. The mediators in the sample constantly referred to the focus which the concept brought to their work. However, the conclusion from the study must be that there is no singular understanding of what the child's best interests entail. Thus, it would seem to be used almost as a talisman in the negotiation between both the parents and all the individual professionals who form the separation process for them: the "child's best interests" had no more meaning than a device with some accepted authority in the process to stop one line of negotiation and move back to the subject matter of finding an acceptable agreement about the children's arrangements. It was clear from the clients that "acceptable" was measured in terms of the bargaining process between the two parents, unless the parents themselves shared a common understanding for the term "child's best interests". The degree of animosity would depend largely on the level of the clients' personal conflict. A major concern of the professionals, with the exception of the area two court welfare officers, was the avoidance of the parents' emotional conflict. It was apparent that the child's best interests could be used as a tool for placing the discussion away from the parents separation and onto arrangements for the child. The court welfare team in area two, however, had such constraints of time that they could only engage the emotions of parents with a certain predisposition to the process they offered. Those clients who were not able to use the therapy offered in the few short meetings had to go elsewhere due to the officers' lack of resources to offer a more wide ranging service. The solicitors throughout the sample could be seen to be client-oriented, in as much as their instruction came from the client and they all tried to act for the clients' wishes in the court process. They all, with perhaps two exceptions, tried to encourage the client to think of the implications for the child, but none of them had any strong belief as to elements which protected the child's welfare. The conciliators of both areas generally showed the classic mediation model responses. They all spoke of their job entailing facilitation of the adults' discussion, but with a focus on the child's welfare. In both areas, the court welfare officers, despite attempting to offer a therapy model in area two, essentially attempted different methods of engaging the parents in a discussion about arrangements for the child. When this failed the focus shifted to writing the report of the proceedings for the court. When the responses are taken as a whole, essentially two of the models which were suggested at the outset were actually seen. The expressions of therapy did not achieve this in any coherent sense, and the processes so described could be argued to be another process of attempting to negotiate a settlement using a more indirect method than conventional mediation. This conclusion is drawn as the closest methods to therapy were not on-going: when the focus of a potential agreement was lost, the sessions were stopped.

Essentially, it was apparent from the whole of the responses of the professionals that the desire was to create an amicable discussion which reached an agreement on the sole issue of arrangements. The similarity between this and the aim of the court process is striking. And yet, this is not the only focus. If this was the aim of the law - to produce an amicable settlement between the parents without reference to their separation conflict - then the process would be going some way to achieving its aim for some of the clients. However, the focus for the process is the welfare of the child, and this is the paramount consideration. The implication of the findings is that there is no intuitive understanding of the concept of the child's welfare. Indeed, one of the strongest arguments running through the study was that a number of the professionals felt that only the parents could justifiably make the decisions as to the values in their child's up-bringing: essentially that the child's best interests are subjective. Two questions emerge from these findings: first, can there be a coherent understanding of the child's welfare; and secondly, at what stages of the process of separation is it binding?

5. Christie (1977).

PART FOUR: THE PSYCHOLOGY OF SEPARATION LAW.

4.1 THE EMPIRICAL FINDINGS CONCERNING CHILDREN AND PARENTAL SEPARATION.

A. Introduction.

B. The Studies of Divorce and Children:

- i. the nature of the research;**
- ii. large scale empirical studies;**
- iii. research on specific issues;**
- iv. the research findings.**

C. Implications for the Law:

- i. ascertaining the wishes of the child;**
- ii. the likely effect on the child of any change in circumstances;**
- iii. contact between the child and the absent father;**
- iv. an impact on training, and formulating a concept of welfare.**

4.1 THE EMPIRICAL FINDINGS CONCERNING CHILDREN AND PARENTAL SEPARATION.

A. *Introduction.*

Psychology, the study of the mind, has within its subject divisions the study of human relationships and human emotions. It has concerned itself with the questions of the psychology of society and the psychology of development.¹ While the law offers practical approaches to the problems of social order when relationships end, psychology offers insights and explanations of the processes of development and relationships. The child's best interests while featuring as a term of the law, cannot be understood in that discipline alone. More properly, the study of the law relating to children must recognize the essential psychological nature of the terminology and its concept.

To suggest that law and psychology have not shared ideas in family law is, of course, inaccurate. Psychologists are regularly, and increasingly, brought as expert witnesses to give weight to the arguments of one parent against the other in court hearings for custody and access. As is noted elsewhere in this study² the psychologist can adopt two stances: either to present an argument in support of the instructing side, or, to make clear that his or her involvement in the case is neutral and the evidence is regardless of which side gave the instruction. This, however, is law using psychology on its own terms; regulated by legal rules of evidence and process. This part of the thesis concerns points at which the law listens to psychology on psychology's terms.

It is inaccurate to suggest that this too is without precedent. The Law Commission in its Working Paper on custody and access law³ adopts an approach which

indicates an awareness of the empirical, psychological studies. However, the Children Act 1989, can be seen more as fine tuning of the law, rather than a radical response to the studies. The Commission clung to those empirical findings of the psychologists which suggested that the process of law did not contribute to the psychological distress of the child in separation disputes.⁴

This could be seen as a conservative use of the empirical studies; one which supported the aims of reforming in the most acceptable manner. Thus, the working practices in private law are not required to change. However, this leaves the problems of interpretation of the child's welfare still unresolved. Further, the studies of the law by the psychologists have sought to find out about what happens to children's psychological well-being when adults separate, and many interesting observations have been made. However, the studies do not present a reworking of the law. The conclusions are that the child needs certain conditions within which separation damage can be minimized, and that the parents need to act in certain ways. The thrust of the conclusions seems to suggest that the psychologists accept that the law will remain a constant to work around: the psychologists seem reluctant to look at legal process reform, while the lawyers do not look at psychology.

Maidment (1984) indicates that the reluctance in the law to apply the findings of psychology is not new. She indicates: "Neither in 1839, 1886, nor 1925, which are the legislative landmarks, was there any essential understanding of what the welfare principle meant other than as a reference to existing judicial values, as expressed through judicial decision-making. Nor was the welfare principle related to extra-legal knowledge or understandings. That is as true today as it was in the earlier period, for the achievements of the twentieth century in the scientific study of the child have largely passed by the legal system".⁵

The conclusions to the empirical study above asked two questions: can there be a

coherent understanding of the child's welfare, and at what stages of the process of separation is it binding? This part of the thesis asks these questions of psychology. It is done so from the point of view of a lawyer and not a psychologist, and the intention is to indicate a new dialogue rather than prescribe a new law. The two questions are asked within three sections relating to the psychological materials. The first concerns the work of psychologists directly on the issue of the effects of separation on children. The second section seeks to move on from the traditional area of concern for the law, and to find if there is a theoretical approach which offers an understanding of the child's best interests. Finally, the study asks if any further psychological insight could help in the legal process of social ordering in families which can no longer remain as a single unit - the possibility of a therapy model in separation law.

B. The Studies of Divorce and Children.

i. the nature of the research.

There are a number of studies, mostly American, into the effects of divorce - or the ending of a parental relationship - on children. However, these are by no means complete. Indeed, Richards and Dyson (1982), reviewing these studies in the context of English law, make the point in the conclusion to their review that there are many gaps in the understanding of the process which occurs with children: "Many times we have had to point out that good research evidence is either incomplete or totally lacking. Public and professional concern has not led to much research activity. In fact, most of the work we have used is not research on marital separation as such but stems from investigations of maternal

deprivation or single-parenthood".⁶ These researchers are perhaps the leading authorities on the effects of separation on children in this country.

A decade later, as Richards (1991) indicates there has been some very good work in the area of divorce, notably on the effectiveness of conciliation in America, for example, the work of Joan Kelly (1991b). In the article, Richards indicates that until recently there was very little evidence to suggest that marital separation had lasting effects on the children. He reports that recently three large "cohort studies" have presented evidence of the long-term effects of divorce. There is evidence, Richards indicates, "that divorce has consequences, some at least, that persist into adulthood. These effects may include leaving school with fewer qualifications, a reduced chance of tertiary education, or a job with lower status and income than might be expected, given the initial social status of their parents' family. In short, after parental divorce, children tend to be downwardly socially mobile". This may also produce adverse effects on the children's own marriages: women, Richards reports, having a higher incidence of marriage break-down in their early adult life than their peers whose parents did not separate, and men not marrying in their early adulthood. However, these findings, Richards feels, could be attributed to a number of different variables and are not, necessarily, linked to parental divorce. The work and findings of Elliott and Richards (1991) have already been considered⁷ with its implications for the educational performance of the children of parents who separate. A similar result was reported by Block, Block, and Gierde (1986). They took a sample of some 128 children at 3 years of age and followed them longitudinally. By 14 years of age 101 were still participating in the study, and of these 41 had experienced their parents separation and divorce. When the data was analysed, the children who were going to experience divorce could be identified with emotional difficulties, in some cases, years before the divorce.

There are a number of reviews drawing together the literature on separation notably Schaffer (1990) and Richards and Dyson (1982). Other works draw on the studies, alongside other research, for example Cox and Desforges (1987)

ii. large scale empirical studies.

There are a number of large scale studies examining all the effects of separation on a wide sample of children, some of them over a long period of time. Some of the most famous examples follow. Their research findings are not reproduced here, but they establish the general pattern of the reactions of children to separation. Their conclusions inform the later discussion in this work. A particularly well-known study of children and divorce is Wallerstein and Kelly's work published in *Surviving the Breakup* which draws on studies conducted with various samples of children and adolescents. The criticism levelled at the work is that it drew conclusions from children in a programme for coping with divorce, and therefore the findings may be unrepresentative of "normal" divorce. This difficulty is noted by Richards and Dyson (1982). However, they feel the results can be used with care, as they closely resemble the findings of other studies. Schaffer (1990) notes that "Wallerstein and her colleagues were among the first to recognize that divorce is 'not' a single circumscribed event but a multistage process of radically changing family relationships ". In a later study which Schaffer (1990) reports, the sample had been followed-up by the team (1985), Schaffer summarises the findings of the study thus: "Initial reactions at all ages tended to be severe in many cases, and although these abated within the next two years or so, long-term sequelae were no means uncommon. The authors believe, however, that these were not so much due to the divorce as such as to the disrupted parenting ... following marital rupture".⁸ Wallerstein (1985) indicates three stages which emerge from the longitudinal study: a first, "acute" phase,

where emotional and physical separation takes place, and perhaps lasting 2 years; a second, "transitional" phase, where each parent experiences a rough period, establishing a new life-style; and a third "post-divorce" phase, where the new life-style is established.

Joan Kelly, with Robert Emery, (1989) criticises Wallerstein and journalist S. Blakeslee's publication of the data from the more recent studies (entitled *Second Chances: Men, Women and Children a decade after divorce*). They make two criticisms. First the medium of a book for popular rather than scientific consumption presents the data in a way which is "consistently dramatic, frequently overly so". Secondly, and more damagingly, Kelly and Emery suggest that the book presents on the one hand many ideas, "but it is also full of conclusions that are scientifically invalid": there was no control group against which to test the "scientific" findings.

Elsewhere, Kelly (1991a) gives a review of recent American studies in divorce and children and finds that: "The literature...suggests that parental-conflict styles, custodial-parent adjustment , and the type of custody arrangement may significantly affect the quality of life and the psychological adjustment of children in the years after divorce".

Wallerstein's research has not been accepted entirely amongst academics in this country. Elliot, Ochiltree, Richards, Sinclair, and Tasker (1990) propose the view that "most research has been concerned with investigating which factors make benign outcomes more or less likely". From this, they observe that "divorce is strongly associated with poverty and for the majority of households with children it brings a sudden drop in income, This, together with other factors such as poor housing and changing schools, is linked with the poorer educational attainment of children". This statement is worth consideration on its own, as the

implications are massive. Not only does it suggest that poverty means a lack of achievement of the full potential of the children of divorced parents, but it must also imply that these factors pull down the children who are born into poverty.

Elliott *et al* also discuss the recent Wallerstein publication, concluding that while it brings the issues of separation to a wider audience, it also "mis-leads" on two important issues. First, it over-plays the negative effects reported by the children, more so than other research projects would support, and secondly, it portrays children who are asked to think about their parents separation as completely and continuously overwhelmed by that experience, and this, they feel, is an over-exaggeration.

Schaffer describes the work of Hetherington, Cox, and Cox as "one of the best-known and most soundly devised investigations in this area". Schaffer (1991) reports that the study was longitudinal, initially with 48 children, averaging 4 years of age at the start of the study. They were studied at 2 months, 1 year, and 2 years after the divorce by a variety of methods, and using different data-collectors (teachers, observations, etc.). The original group, plus additional subjects making a total of 124 families were followed-up 6 years after the divorce. The initial study had shown that girls were quicker to adjust to the post-separation situation than boys. The follow-up indicated the position had not changed. The study also showed that the children in families where the parent had remarried were subject to more behavioural problems than the others in the first two years of the new marriage. Schaffer (1990) indicates that the real cause of the long-term effects on the children is shown in Hetherington's later work to be the adjustment of the mother, the state of the marriage with the new step-parent and family, and the attitude of the new adult.

iii. research on specific issues.

Other research concentrates on specific points, as in the next two examples. H. McGruk and M. Glachan (1987) undertook a research into the perceptions of children into the continuity of parental status after divorce. The research used play with dolls with a sample of 4 - 14 year-olds. They found that three responses were made. In the first, the children unquestioningly asserted that parental status continued beyond divorce. In the second, the child felt that the status of the parent depended on a continuity of interaction with the child. The third response recognised a distinction between the rôle of parent and the relationship with the child. They found that the children's perception became more sophisticated with age, so that the children over the age of 10 would all distinguish between the rôle of parent and the relationship with the individual parent. It was noted that children from divorced parents displayed a more mature understanding of the relationship between the parents status and the actual relationship with the child, reflecting that the child adapts and learns in the divorce situation.

Farber, Felner, and Primavera (1985) conducted a study of factors mediating adaptation with adolescents experiencing parental separation. They identified a number of factors which were important in the adolescents ability to adjust to the post-divorce situation: environmental and stress factors within the family, and a second set of factors concerning the distance from home, in making the post-separation adjustment. In the former, where the family was generally adept at changing to new situations without great stress, the divorce changes could be made more smoothly. In the latter, it was found that the greater the distance from home, the greater the levels of anxiety, depression, and hostility.

iv. the research findings.

All of the research projects outlined above need to be read together. Many professionals within psychology have made similar general observations, and the following schema is grounded on this, and especially on Schaffer (1990), Cox and Desforges (1987), Richards and Dyson (1982), and of the lawyer, Maidment (in Freeman (1984))

The effects of divorce are best understood if taken broadly in terms of the child's developmental stages. The reactions and needs can then be seen more clearly. This is largely a summary of the work of Cox and Desforges (1987), which also draws on their experience as educational psychologists, and the conclusions of the large scale studies noted above.

0 - 5 years.

At this stage the studies show that children react to the divorce by regressing from the developmental stage they have reached. Parents, however, need them to display a maturity often above that which they have attained. Essentially the parents want the separation; the child does not, and therefore regresses to find a time of security. There is a sense of personal rejection at this stage. The regressive behaviour and emotional outbursts could be seen as an attempt to voice an opinion against the separation. Additionally, the child will project the cause of the breakup onto him or herself, imagining that had he or she not done a particular deed, mother or father would not have left. There is a great amount of guilt in this: which may also manifest itself in very "good" behaviour as atonement.

The child will have fantasies about a parental reconciliation; equally the

trauma of the loss of one parent may make the child frightened of the loss of the other. The regressive behaviour attempts to regain the affectionate behaviour towards the child. The child may wish to be with the parent at all times.

The access / contact visit may be particularly difficult due to the fear of loss of the remaining parent. This should not be mis-read as a fear of the father. Predictable timing for the visits, and a routine surrounding them, is advised, to build up confidence. The same loss may also be shown at the end of the visit. Parenthood concepts are hard for the small child to understand - the rôle must be visible and the concept of remaining a parent, although not living together, is difficult (Farber, Felner, and Primavera (1985)).

Cox and Desforges suggest that brief and clear explanations of what is going on may help and that contact should not be stopped.

6 - 8 years.

The children are gaining independence and therefore need a secure home base from which to explore the world. They become anxious that what they had perceived as permanent was apparently temporary, and therefore worry about permanency in general. They have lost the fantasy mechanism to cope with this fear, but have not found the adolescent's anger as a substitute. The major fear is of losing the family, not just the mother, due to their awareness of their limited independence.

Children of this age, often willingly, become go-betweens. They can see it as their attempt to reconcile, and often use their perception of what each parent wants to hear. Clearly the child's willingness to take messages is

open to abuse by the parents.

Between the genders, boys may be expected to become independent more quickly, and contain their emotions.

9 - 12 years.

The child now has a stronger sense of the wider community, and has more pronounced personal opinions. There may be shame that the family is breaking up, and therefore a reluctance to discuss the issue, cutting themselves off, believing them to be the only child experiencing the difficulty. They have a strong sense of loyalty and fairness, and could attribute blame to one party and loyalty to the other. A parent can take advantage of this loyalty polarization.

13 - 18 years.

Here the children expect to be leaving home, but the rôle is reversed. The adolescent reaction observed by McGruk and Glachan (1987) indicates that there is a need to have a strong home base to leave and security in that base can be devastating if it is removed.

Cox and Desforges also indicate that the adolescent can find difficulty in a reversal of the rôle of moral explorer. The adolescent has the image of social (and, especially, sexual) explorer. When the parent reverses this rôle with new partners, especially a number of new partners, the effect can be adverse on the adolescent.

The adolescent is very independent, but is still a child. Parents can give a great deal of responsibility to the adolescent. The responses can be either a rapid maturing, or a halting in development. They still retain a polarized

view of right and wrong. They can also feel and show anger, and have "temper tantrums", for example withdrawing from school work at a stage approaching national examinations. Indeed, the requirement of course work and continuous assessment may increase the pressure on the teen-ager.

This is a time when independence works against traditional concepts of access or contact. The child does not have specific free times, such as Saturday afternoon, to be with father. Indeed, the time is spent forming and exploring peer group friendships. This can lead to a friction with the non-residential (non-custodial) parent, and indeed, Cox and Desforges indicated that about 50% of teen-agers lose contact with their natural father within two years for this, and a variety of reasons.

Over 18 years.

This group can also be affected by the separation of parents, who often wait until the children have left home before the divorce. Children often move away from home at this stage, and the loss of the parental home as a symbol of security can undermine their confidence and make adjusting to new pressures more difficult.

Two general findings come through all the work. First, there are different abilities to cope with separation according not only to age but to gender. Wallerstein and Kelly (1980), Hetherington, Cox, and Cox (1976) and Cox and Desforges (1987) all indicate considerable gender differences in coping with stress. The difference occurs in the length of time which the child takes to overcome behavioural problems. Effectively both boys and girls change in response to the separation, but the research would seem to indicate that girls recover their previous character more quickly than boys. Cox and Desforges indicate that the social acceptability for girls to express emotions is a major

cause of this. Secondly, many of the studies indicate that talking the difficulties through with the child as a parent is very important. However, there is incredible danger in making the child feel as if he or she had to choose between the parents.

C. Implications for the Law.

Certain implications for the process of law can be drawn from the findings of these studies. What has not been found in these studies is a theory of the child's best interests. However, the empirical findings are important for elements of the statutory checklist and the themes in the case law. The most important implications, in the view of this author, are outlined here. First it must be the case that the law, and the professionals who practice the law, should understand the basic issues of the empirical psychological studies. Essentially, there needs to be a greater awareness of the types of difficulties which should be expected at different ages. This would simply give the professionals more confidence about the nature of separation for the children, and thus pass on that confidence to the parents. It is not envisaged that with a little learning, the professionals could be transformed into psychologists.

Beyond this, there are some fundamental principles which should inform the practice of the law. The Children Act 1989, section 1(3) adopts a checklist to attempt to give guidance to the courts in their deliberations over the child's interests. The key issues in the checklist which can be informed from the empirical study of children and separation are ascertaining the wishes of the child (s. 1(3)(a)), and the likely effect on the child of any change in his circumstances (s. 1(3)(c)). The other items in the checklist require a theoretical definition of the child's best interests, and will therefore be examined later.

After the issues relating to the checklist, contact between the child and the absent parent is highlighted as the theme which can gain most from the empirical findings of the psychologists. This, too, will be examined.

i. ascertaining the wishes of the child. ⁹

As was seen in the previous chapter, the child is involved in the court process through the work of the court welfare service in different ways, and degrees, of formality, depending on the philosophy of the particular team. The philosophy is not centrally fixed, but rather comes from a balance of approaches within the offices, and between the offices and the courts in a particular area. However, under the old law the courts were, in most cases, keen to leave the assessment of the child to the court welfare teams. The conciliators also have skill in listening to children; a skill which they have identified as a training necessity. They seem prepared and able to involve the children in the process of conciliated settlements, although again the practice and methods of including the children seem to differ between services. Solicitors are reluctant to become involved with the children. They define their jobs in the classic service-to-the-client model. Thus, whereas the para-legal services see the child as one of their clients, and their job as looking to the child's best interests, the lawyer looks to the parent as client and sees the child's interests as protected by other professionals.

Under the old law, then, the wishes of the child were being sought. However, the reluctance of the lawyer to become involved with dealing with the child, unless the child could act as a crucial part of the evidence and would then be needed in court, reflects an understanding that involving children in the process is a specialised job. Children could only be involved in a hearing in the High or county courts, and the judges reluctance to involve them has already been noted.

The services directly involved with ascertaining the wishes of the child have taken up the need to develop specialised techniques.

Both court welfare teams and both conciliation services in the research areas, when asked about training, expressed the need to gain more specialised knowledge of how to talk to children. All four services had run training days on understanding children and gaining their confidence and trust. These services were using new techniques of ascertaining the child's wishes and concerns both through play and other indirect means of communication. All expressed concern that children should not be made to feel that a decision to choose between its parents was needed from them. All expressed the need for more training and experience on this point, and indicated that this was a major priority in a small training budget. Solicitors remain happy to avoid such training, being generally in favour of leaving the job to those charged with it by the courts.

In the empirical studies of children and divorce, one element which recurs as a procedural danger is the issue of the ways in which the wishes of the child are sought during the process. These fall into two main concerns: the first concern is that the child may feel that he or she is required to elect to give his or her love to one parent or the other; the second flows from the first in as much as the child's words and behaviour may be difficult to interpret, as the child could have a different goal of bringing the parents back together. As seen above, the separation of the parents is almost always undesired by the child. The child's best interests were often stated by the professionals in the author's study to be for the parents to get back together. Generally it is only older children who accept that reconciliation is a fantasy. Younger children may be wrapped up in confusion, and indeed guilt, that the parents' decision is somehow related to their behaviour - the parents are separating and it is the child's fault. The research is clear that the wishes and fears of the child should be addressed by

both parents, and the continuing parenthood should be affirmed to the child, an explanation being given in a way the child can understand and as often as the child needs the reassurance of the explanation. This is a utopian method of separating. It is more usual that the parents are engaged in fighting about the terms of their own separation. The rational affirming explanations are not always available because the parents are still in conflict. Consequently the children look on, or are dragged into the crisis. This is not always the case, but it is likely to be these cases which go to law, and which will probably need an order from the court, as the parents cannot reach agreement between themselves either immediately or in the long term. Thus the way the courts decide to involve the children will be crucial.

The reaction of the child and the level of understanding of the child as to what is happening will differ between individuals. There was a vast range of opinion offered in the study as to an age at which the child could be involved in expressing its own wishes, from three to nine or ten years of age. In addition, some believed that the child could be part of the separation process from birth. This distribution was across the sample and did not appear to vary by profession. Likewise there was some difference in opinion as to whether the child should simply be told of the new arrangements, and whether the child's wishes were crucial to the proceedings. It is clear from the psychological research that the child should be allowed to express his or her views in a way appropriate to his or her understanding, but it is also equally clear that ascertaining the child's wishes should not entail making the child feel that he or she is carrying the burden of decision making. Thus, the importance of continuing to view the work with the child as a specialist activity under the new law is of paramount importance to the welfare of the child, especially for the younger child. This view was accepted by the Law Commission, although no guidelines as to how the child's wishes should be ascertained were given beyond the checklist principle.¹⁰

Thus, it may not be the case that the ascertaining of the child's wishes will be a specialist enterprise under the new law. The rights of a court to interview a child have been extended under the new law to include the magistrates' court. However, there is no guidance as to what is expected from the court in exercising its obligation to regard the wishes of the child. There is no general duty on the court to appoint a welfare officer in each case. Indeed the duties of the welfare officer are unclear under the Act.¹¹ Initially, there may be enthusiasm in the courts, especially those given a new power, to exercise the duty to interview the child in the court or in chambers. This was the climate reflected at one magistrates' training day attended by the author. Many of those present felt that it would be useful in each case for the court to get to know the child, and that little harm could be done by bringing the child to court. It is submitted that this would be a dangerous interpretation of the checklist requirement. The rôle of the welfare officer must be strengthened in this area, and the psychologists' findings reflected in the practice of the court. In some areas of the country this will be the case, as welfare reports are automatic, in others the welfare report is not as widely used.

The case of a child expressing a preference which is then taken as the basis for a case by one of the parents causes great dilemmas for the court, especially if the child expresses a desire to speak to the judge. This was at issue in a case observed in the study. The child, a mature nine year old, was alleged to express a desire to stop living with the father and move some two hundred miles to live with the mother. The court welfare officer reported that the child appeared settled with the father, and only expressed the preference when with the mother. The child requested an opportunity to speak to the judge. The case shows the two problems clearly: there was a difficult issue of what the child meant in asking for the change of residence, and then how that meaning should be ascertained. The child could have been expressing a genuine wish to move homes to be with

the mother, but he could equally well have been expressing a view that he felt he had to move to fit in with the dialogue surrounding him in the mother's house. Indeed, he could have felt it necessary to express his love for the mother by making the request to be with her. Likewise the lack of any references to the change when with the father could have been because of genuine happiness, or because of the desire to show love to the father by remaining quiet. The sadness remained that the child could only live with one parent and both parents clearly loved the child, and the child his parents. The judge felt that the court could not gain any more information from seeing the child than the welfare officer had obtained, and the court was satisfied that the child was happy with the father, but this was a genuine request to move. The court decided that the least detrimental outcome was that the change be made, as the child would recover from the move before the onset of public examinations.

A Possible Direction for Ascertaining the Wishes of Children.

The most interesting part of the above case, and cases like it, is the difficulty in deciding many welfare issues. The concern is for ascertaining the child's wishes. There could be a general requirement that a trained welfare officer should ascertain the wishes of the child. This could be reported to the court, allowing a detailed account in a controlled environment. This would be consistent with the child's welfare. Generally children would not come to court. There remains the case of the child who wishes to see the judge. Clearly part of the training for the judges and magistrates in the family proceedings court must be in the dangers of interviewing the child, and in ways of communicating with children.

The criteria for involving children at court need to be identified. The courts have not had a coherent policy on this point, relying largely on the personal

preference of the judge. In the future it is suggested that if the courts are to see children the guideline should be the welfare principle. The welfare officer should present, within the report, an opinion as to the child's request to see the judge. The courts' decision should then be made not on the old principle of giving evidential certainty to the court, but rather on a new basis of enabling the child to come to terms with the settlement. Thus, the child's attendance would not be to elicit his or her opinions as to the outcome, but to allow him or her to express feelings to the judge, and for the judge to explain the process and the fact that the parents remain parents, but a particular settlement is needed. This would help to remove the danger to the child of being brought to court for evidence, but would enable the child who had something to say to be part of the hearing, for the child's benefit rather than the court's.

ii. the likely effect on the child of any change in circumstances.

While the issue of ascertaining the child's wishes is of great interest, the majority of the other checklist principles need a general theory of the child's welfare. The issue of the effect of changes on the child's circumstances can be noted in the research outlined above. Richards (1991) concludes from the research, that "financially, the consequences are likely to be very different for men and women. For women, at least a period on state benefits will be the experience of the majority, while men usually experience a much smaller drop in living standards and may even be better off".

This goes to the heart of the division which the court makes between the financial settlement and the child's best interests. The effects of poverty on the post-separation family must be made clear to the professionals and the judges, and the divide that is set up in *Richards v. Richards* (1984), between the child's

welfare, and general financial provision, must be united. It is very clear from the combined research on the standard of living in post-separation families and the educational attainments and behaviour patterns of the children of divorce, that there is no such division, and that the whole of the financial separation is about the child's interests.

iii. contact between the child and the absent parent.

The psychology research findings have obvious implications for a number of the case law themes. Perhaps the most obvious is in contact. In the research examining the approaches of the professionals towards the child's welfare, it was found that the real disputes lay in access. Clearly there are implications to be learned about the teen-ager's need for contact. However, perhaps the most important element for the legal system to learn about relates to younger children. In the ideas presented above, Cox and Desforges are clear that the child can be terrified of losing what he or she sees to be the remaining parent. Cox and Desforges also report children crying at access visits, clinging to mother, becoming anxious and distressed. This was reported by the professionals in the author's to be a great source of concern for the custodial parent. The custodial parent was often reported, especially by the solicitors, to be using the child's response as evidence of either the child's desire not to fulfill access (which would lead to the mother refusing access and the father seeking it through the courts), or at worst, the mother imagining some sort of abuse of the child (again often leading to a desire to have the access stopped by court order).

In addition, an awareness of the loyalty reactions, and anger feelings in older children would explain much of the behavioural difficulties that can either act as a barrier to the child and the parent making access or contact successful, or the

parents themselves communicating about the child's contact.

iv. an impact on training and on formulating a concept of welfare.

Clearly, an understanding of the empirical psychological findings instilled into the professionals would allow some sort of explanation to be given to the parents, not just at the time of the difficulty, but at the time of the order or the settlement.

The issues of the application of the empirical findings in the legal process are essentially issues of training. Christopher Clulow (1990) indicates that while the checklist of itself has no meaning, except for a framework on which to hang ideas about a particular case which the judge intuitively discerns, its concepts could be filled with ideas stemming from psychology. This has an enormous cost implication and would require a political will to develop the concept of the child's welfare, and to communicate this to the professionals. Clearly, there is a weight of material which could be used in educating the professionals in the effects of divorce on the child. This should be studied at an interdisciplinary level.

Further to this training implication, the checklist could be developed as the framework for a code of practice, drawn up by a Commission for the Child's Welfare, selected from a range of child-related professionals in a variety of disciplines rather than law alone. Such a commission, the author envisages, would be on-going, regularly updating the guidance to take critical account of new ideas and findings. This could give the current process of the law a more theoretical understanding of the needs of the child, and the training programme, an explanation of the disciplines underlying the principles.

The empirical research on divorce and separation and children informs the three particular areas of practice discussed above, and suggests to the author the need for a commission, and increased interdisciplinary training. However, the empirical studies do not indicate a great deal about the meaning of the child's best interests. So far there has simply been much evidence suggesting that separation can be an emotionally dangerous time for children, and that it can have lingering effects for many years in some cases. However, this is valuable to establish in itself and needs to be identified.

The reason that the empirical studies do not help very much is that they are based on a common understanding of the child's development, which the separation professionals do not necessarily share. Therefore, in a law thesis, the studies look piecemeal. In order to get the most out of the studies, and indeed to progress further towards a more coherent theory of the child's welfare for separation law, the common understanding of the psychologists in this area, must be discovered.

1. For a broad introduction to the scope of Psychology, see Gross, (1992), p1-20.
2. See Appendix A.1, and in 3.2d.
3. L. C. Working Paper No. 96, pp. 80 - 81, 91, 95, 120 - 121.
4. L. C. Working Paper No. 96, para. 4.9, p. 95.
5. Maidment (1984), p.90.
6. Richards and Dyson (1982), p. 75.
7. *Supra*, p.^{9.}~~000~~.
8. Schaffer (1991) p. 158.
9. D.M.R. Townend, pp. 28 - 31, in Parry (1992).
10. L. C. Working Paper No. 96, para. 6.41.
11. Children Act 1989, s. 7.

PART FOUR: THE PSYCHOLOGY OF SEPARATION LAW.

4.2 ATTACHMENT THEORY:

A DEFINITION FOR THE CHILD'S BEST INTERESTS?

A. The Theory:

- i. infants and attachments;**
- ii. attachments in children, adolescents, and adults.**

B. The Implications for the Law.

4.2 ATTACHMENT THEORY:

A DEFINITION FOR THE CHILD'S BEST INTERESTS?

A. The Theory.

"Maternal Deprivation" theory was first published by Bowlby in 1951. Professor Smith (1991) indicates that it was Bowlby's response to the needs of children left as refugees and without homes by the Second World War, when "institutional care focused on the physical needs of the child...but little on the child's emotional needs". The result of the theory was a change in institutional care to take more account of the latter. However, Smith suggests that the negative effects were guilt in the mothers who failed to fulfill the rigours of Bowlby's ideals.

Bowlby's theory indicated that mother love was as essential for the child's emotional development as "protein and vitamins were for physical growth".¹² Smith indicates that the theory then went a step further by suggesting that bonding was essential with the mother only: "A warm intimate and continuous relationship with his mother".¹³ The theory was initially popular. However, as more evidence came to light about the theoretical assumptions which Bowlby based this on, the theory lost favour. Smith (1991)¹⁴ reports that "imprinting" is not as strongly accepted, and it has been shown that 1 - 2 year olds can make "new social relationships with adults"; there is a weight of work which suggests that the mother need not be the only carer; the effects of the loss of the mother in the post-war children's institutions is now seen as only being part of the picture, as the generally unstimulating environment would also adversely affect the child; the importance of Harlow and Harlow's monkey experiments (an important contribution to Bowlby's theory) in deprivation have been reevaluated, and it is now seen that the deprivation effects can be reversed with treatment; Bowlby's

conclusion that the link between maternal deprivation and delinquency has been reassessed as unclear, due to the number of other social factors which could influence the adolescents behaviour.

These later developments could lead Rutter to conclude in 1981 that Bowlby's basic thesis was sound. Rutter states: "The last eight years have seen the accumulation of evidence showing importance of deprivation and disadvantage as influences on children's psychological development".¹⁵ However, what, according to Rutter, is equally clear is that other influences operate in deprivation. Effectively, acute distress in, for example the child's going into hospital, is as much to do with attachment behaviour as it is with the strange and frightening environment.

The changes in self-perception from the 1960s onwards have made Bowlby's work socially unacceptable, and it is perhaps forgotten in the popular knowledge of the work that it was academically sound in its time. The problem could be that attachment theory generally is perceived in the light of Bowlby's early work, whereas it has a different descendancy.

Attachment theory can essentially be broken into two parts for the purposes of this short presentation: first attachments in infants, second attachments in older children and later life. There are two ideas which it is important to see. First, attachment theory indicates the child's need for a framework within which he or she can explore and evaluate the world, and thereby learn. The framework therefore is relatively defined in terms of the characters who interact with the child. The second idea which should be brought from the theory concerns the implication of damaging the framework. This presentation of attachment theory, to illustrate these ideas, is largely based on that of Professor Smith (1991).

i. infants and attachments.

During the late 1960s and early 1970s, Bowlby and Ainsworth devised ways in which a child's attachments could be seen. The "Strange Situation"¹⁶ measure was devised, whereby a child's ability to cope with attachments was observed. Using a series of short episodes the young child 1 - 2 year old, was presented with environments with changing adults - the mother or the stranger - or with the child left alone. From this series, the researchers analysed the responses of the child to each session. The results were then interpreted into a three "type" rating. Though criticised for the small sample size and the interpretation of "normal" response, the Strange Situation has become the basic infant test for attachment. In infants, it will be noted, the attachment is essentially dependent upon physical proximity. For a further discussion on the question of first bonding and trauma caused by separation, see Schaffer (1990)¹⁷

ii. attachment in children, adolescents, and adults.

Smith reports that this is less concerned with physical proximity, and focuses on internalized qualities which are abstract. It is noted that the process is two way, as the abstract knowledge of the bond and the definition of that between the adult and the child, is known to the adult also. Again, the Strange Situation test is used, but also Klagsburn and Bowlby¹⁸ devised a "Separation Anxiety Test", which used pictures of separation situations with children and adolescents to elicit a response which could be rated as to the level and health of their attachments. Main, Kaplan, and Cassidy¹⁹ devised a test to measure the attachments in adults.

It is clear from a variety of work that attachments can be made with different

individuals, and indeed the child could be, and as he or she develops, probably will be, with more than one individual. Generally, as Schaffer and Emerson [Smith p.69] found, the attachment would be with the individual who interacted with the child and played a lot with the infant. Indeed, Cohen and Campos²⁰ found that in the Israeli kibbutzim, children would spend a great deal of the day with the nurse (metapelet), and would have a strong attachment to both the nurse and the mother. Other family members who became involved with the child also became attachment figures. Clearly the important thing is not the label but your actual relationship with the child. This has implications for the law's dilemma over whether the mother is naturally the better carer. The implication of this, and of the work outlined by Schaffer (1990)²¹ is that any residual presumption in favour of the mother in the legal system should be abandoned. The important consideration is the identity of the attachment figure or figures.

The crucial question is: is attachment theory only about childhood attachments, or does it concern later attachments. There is evidence, from work with adolescents and adults, that the attachment models with which the individual grows-up influences the pattern of future attachments. For example, between the adult and the parent, between the adult and siblings, between the adult and friends, and even influencing the attachment between the marital partners. Bowlby, in 1988²² indicates a theory for this, which is widely accepted. He suggests that each individual has an "Internal Working Model". This is developed from one's earliest attachments, and forms a series of images of the attachments, providing for each individual a template of how attachments should be for the individual.

In children, prior to the development of the ability to think in concepts and reason in the abstract (which Piaget would suggest was under 12), the importance of the Internal Working Model is very great, as this is the guide for coping with attachments, and is created experientially. In adolescence and adulthood, the

individual may be able to manipulate the Internal Working Model and modify the ability to cope with poor attachment experiences. It is only may, however. Thus, in Main *et al.*²³, while some of the sample of adults who had experienced weak infant to parent bonds themselves as infants had weak attachments with their children, some mothers in the sample who had experienced very negative attachments in childhood, seemed to have come to terms with their experiences and changed their Internal Working Models, redescribing their parents' behaviour as stress related or caused by overwork. The outcome for the mothers who had come to terms with their experience of attachments was that their relationships with their children was very positive.

The empirical studies on the child and divorce are the empirical evidence for the question here: does the breaking of attachment produce adverse effects in the child? It has been seen that there is definite evidence that a large proportion of children in separation suffer emotional (attachment) stress in the short term, which can be manifest in behavioural problems, depression, and general emotional difficulties. These can be serious, and for the many they pass over time. In the long-term, problems may relate to the child's emotional health being disrupted by the trauma of divorce at the time of their fastest development and during their education. The long-term effects may not be emotional problems, although for some the Internal Working Model may stick with images of the separation as a very negative image for future relationships. Hence, the reports of relationship difficulties in the divorcing children, in later life. For some the disruption of education and reduction of lifestyle could cause problems of their own. It should also be borne in mind that the separation is not a single event, but a series. With parental conflicts, the child may well be faced with a long series of incidents which each serve to disrupt the attachments with the parents and the former images of attachments and security.

B. The Implications for the Law.

The law could find in attachment theory both the fulfilment of the child's best interests, and also the imperative to follow the implications of accepting this theory through to its conclusion by reforming to the heart of the process of separation law. It was noted above that elements of the checklist depended upon a theoretical definition of the child's best interests. The Children Act 1989 checklist references all depend on a notion of welfare, or a theory of the needs of the child: section 1(3)(b), the "physical, emotional, and educational needs" of the child; section 1(3)(c), the effect on the child's circumstances; section 1(3)(e), the risk of harm; and section 1(3)(f), the ability of the potential carers to meet the child's needs. These concepts are not explained in the law or in the practice of the law, but could be found in the theory of attachment, and in dealing with loss, as outlined above.

Clearly from attachment theory there is a theory of the child's needs in the separating situation. Essentially, attachment theory concerns building safe relationships with individuals, from which one can explore the world before one can see the world in abstract. The attachments have different qualities as between individuals. One child can have a very fulfilling, stimulating attachment. Another could have a very different, insecure, frightened relationship. The outcome for the second attachment is a difficulty in using that as a solid base from which to learn about the world. The depth of the problem depends upon the severity of the attachment problem. Therefore, the child may have behavioural or emotional difficulties. Further, the theory indicates that the Internal Working Model can, with problem attachments or attachment experiences, cause long-lasting effects. The implication of this is not so much with the positive, making attachments, although that it is clear enough that the attachment should allow the child emotional security on which to base social interaction. Rather, the greater

implication of what is said is that where attachments have to be broken or severely changed, the utmost care should be taken to do so in a gentle way, so as to allow the Internal Working Model to adjust and understand why the separation has been made.

There is an indisputable link between separation law and attachment theory. Clearly this theory of the child's emotional needs stands beside the need for shelter and food: it is a basic necessity for a balanced upbringing. This attachment theory is the definition of the child's best interests.

In order that the child be allowed to adjust emotionally to the separation of the parents, the divorce or the parental separation must be managed very carefully. Now that the theoretical understanding of what the child needs to secure its emotional stability can be understood in a theoretical framework, the work above from the empirical studies of children and separation can form the basis of a discussion to understand the dangers of separating. Now there is a theoretical framework on which to build a working environment to ensure a softening of the blow of separation. Essentially a theory of divorce management.

This could be achieved in one of two ways. Either the system presently operated could be given the code of guidance with a strong attachment theory underpinning the decision-making, or the system itself must be altered. Kelly (1991a) concluded her article on the recent divorce research thus: "Child custody decision-making, whether made by parents, lawyers or the courts, should not be restricted to past tradition and restrictive divorce statutes favouring one parent over the other. Rather, when decisions are made, the goal should be the integration of information regarding those psychological, social, and external contributions that each parent has made to the child's development and quality of life, the extent to which each parent is fostering or diminishing conflict and co-operation, and the

immediate and longer-term needs of the child for stability and continuity in his future relationships with both parents".

In order that the current law could simply accept attachment theory as an explanation of the child's best interests, a code of guidance would have to be developed incorporating ways within the current law. This would be so that the professionals could encourage the parents to devise a strategy which would allow the child to adjust to the separation and the change in the attachments with the parents. It, however, retains the two major difficulties in the current law, namely that the parents are encouraged to perceive the child as the problem, and that the system is geared to producing settlements in a process which the law does not end, but rather seeks to modify.

The overwhelming feeling from the fieldwork undertaken for this thesis, was that the problem was not the children but the failure of communication between the adults. The children, like the money and the house, are simply the weapons of the parents conflict, and not the problems of the system. Thus, having identified that the child's best interests can be found through psychology in attachment theory, and that there is a need for the management of breaking attachments, the focus must shift from the child's best interests to the adults needs.

12. Smith and Cowie (1991) p. 79.
13. Bowlby, quoted Smith (1991) p. 79.
14. *Ibid*, p. 81.
15. Rutter (1981), p. 217.
16. Ainsworth *et al.* (1978), explained by Smith (1991), p. 65.
17. Schaffer (1990), pp 27 - 37, and 107 - 118.
18. In 1976, see Smith (1991), p. 68.
19. Smith (1991), p.68.
20. *Ibid*.
21. Schaffer (1990), pp 96 - 107.
22. Smith (1991), p 68.
23. *Ibid*.

PART FOUR: THE PSYCHOLOGY OF SEPARATION LAW.

**4.3 THE RESOLUTION OF ADULT CONFLICT:
A NECESSARY CONCLUSION.**

The Communication Model and the Imperative of Understanding Grief.

4.3 THE RESOLUTION OF ADULT CONFLICT: A NECESSARY CONCLUSION.

The Communication Model and the Imperative of Understanding Grief

It is submitted that the major obstacle to decision-making in the child's best interests in separation law lies in the law's failure to involve itself with the emotional conflict of the adults. It is clear from the responses of the professionals that many of the parents are in a state of deep conflict with their ex-partner, in many cases, even being unable to accept the fact that the relationship is at an end. Many of the professionals report that the clients cannot respond to invitations to mediate their settlement about the children because of their inability to communicate with their ex-partner due to the emotional turmoil of the separation. The professionals, especially the solicitors, who deal with the on-going fights of some of the parents, suggest that the lack of resolution of the parents' conflict does not end with the agreement for the contact with the child, or with an order of the court. It continues on, sometimes for years. It would be wrong to suggest that it was all couples who failed to resolve their conflict, or indeed all children who were emotionally damaged by the process. However, there are enough in the system of the law, and, given the number of parents and children who lose contact with each other, there is a need to explore alternatives to the legal, settlement-oriented system.

Whilst there is no theory of attachment which continues into the study of the breaking of attachments in adults, within divorce or separation, there is a body of work on bereavement and coping with loss and separation in the context of death. The theory of grief gives an indication of an alternative legal system for the management of separation.

Richard Gross (1992),²⁴ describing the theories of grieving following bereavement, draws on various researchers to show that grief is explained in psychology as a process with a number of stages through which the bereaved individual passes, or indeed can become stuck. Taking two of the models he presents, Engel, in 1962,²⁵ presented a three stage grieving process. In the first stage the individual suffers disbelief and shock. This stage blocks out the reality of the bereavement. The individual moves onto a second stage passing through apathy, exhaustion, anger, guilt and self blame. At this stage Gross indicates that there is a need for sympathetic listeners. The final stage is a re-emergence from the process. Gross indicates an alternative version of the grieving process devised by Ramsey and de Groot. This version separates the same basic process into nine parts through which the individual travels: "shock; disorganization; denial; depression; guilt; anxiety; aggression; resolution; re-integration".

The two experiences of loss through the death of a relative and the loss of a partner through divorce or separation could be said to be analogous. Thus, a feeling for the process of the conflict of the separating couple could be understood. Many of the elements of the grieving process were heard in the professionals' description of their clients' attitudes to the process and their ex-partner. There is also the danger that the partner in the separation process could become stuck in certain parts of the process. This is especially so with the reminder of the ex-partner being very visible in the process, re-opening the contentious issues of the separation with every point of contact.

Alongside the child's best interest, and indeed as an essential element for their paramountcy, the needs of the adults to work through the conflict, and grieve for their relationship, must be recognised. This recognition must be part of the process of separation law. Indeed, it is the very heart of the *communication model*

proposed as an alternative earlier in the analysis. This would have the dual effect of empowering the parents to make their own decisions about their children, freed from the constraints of the emotional turmoil of their separation, and allowing the child's best interests - a managed settlement - to be more closely attempted.

The issue of who the law should cover remains unanswered. Clearly, under the interpretation of the child's best interests which is gained in attachment theory, there should be no distinction made between married and un-married families. The difficulty with a therapeutic system would be the same in both cases: encouraging participation. This could be attempted by removing the distinction, artificially, by removing legal marriage. However, that is not an incentive to use the therapeutic process for separation. The therapeutic process should remain part of the law, and not a voluntary institution, to give it funding and a geographical uniformity, however two elements are necessary to attempt to encourage the use of a therapy separation. First, the point of entry to the system must be much sooner. The separation system today establishes that the parental conflict must be very high in order to make the decision to go to the (very expensive) solicitor. Thus, the system of separation would essentially be looking for clients to enter well before separation was a certainty, not so as to force reconciliation, but so as to manage the separation from a relative calm opening. Essentially, the object would be to bring the work of Relate under a national control with full funding, and a coherent philosophy of therapy and the child's best interests. The second necessity to any move to a separation which entails addressing the partners conflict, is education as to the benefits of such an approach. It is suggested that a compulsory attendance if handled correctly, can make therapy a viable option for couples. Interestingly, the second area court welfare office essentially tried to offer this, but were tied by their late appearance in the process, and their lack of resources, especially time. A therapeutic separation

requires a more open acceptance of therapy in the culture generally. However, if it was available without the current cost to the client, it may be a more attractive option, and so culture could begin to accept the concept.

In essence, the conclusion of the work is that the law presently does not have an understanding of the child's best interests. From the theory of the child's needs in the situation of separation, it is apparent that the law does not ensure the child's welfare, as the child's attachments are often broken without heed to the danger that entails. Further, the current process of law cannot reach a situation where it ensures the child's welfare, since the parents are in a state of unresolved conflict. The law must, therefore, accept the challenge of the child's best interests and incorporate into the provisions of mediation a system of bereavement counselling, to allow the parents to regain ownership of the decision-making process for their child, an ownership they have currently obscured by their own conflict.

24. Gross (1992), p 732.

25. *Ibid*, p. 733.

26. *Ibid*, p. 734.

Appendices.

A.1 Preliminary Meetings.

A.2 The Questionnaire.

A.3 Observations.

A.4 Data-tables.

Appendix A.1

Preliminary Interviews and Pilot of the Questionnaire.

The need for a questionnaire survey of the views of the practitioners became apparent through the reading. There remains a gap between the "law in the books" and the "law in action". The need was felt after the initial literature survey of the legal texts to ask those engaged in the practical work of custody, how they used what the texts conveyed as a checklist of the court criteria into which the cases should fit. This of course immediately reflected the gap in the texts and in my understanding. Informal discussions were undertaken early in the research period, designed to give an understanding of the practice of custody and access law.

Solicitor 1.

The first interview was with a solicitor in a medium sized practice in a medium town. The practice took a variety of cases, the solicitor was the firm's family practitioner.

It became apparent that divorce, custody and access is an emotional, evidential problem rather than a technical legal issue. Words such as "hate" and "bitter" were used in describing the clients attitudes and emotional state, and the fact that the parents were only communicating through their solicitors became apparent. It was suggested that fathers used custody to "get at" the mother especially using the custody claim as a bargaining piece to play off against financial arrangements. The Court Welfare Officer's report was of central importance to the solicitor. Once the report has been given to the solicitors it was suggested that they could assess the realistic situation and the possible outcomes and then "try to bring the parents to agree". Barristers would largely be

used in financial disputes, which would also necessitate their familiarity with the custody and access situation. The Law provides that care and supervision orders are available as part of the palette of orders. On an initial reading this could be useful for the parents in the period immediately after the separation. However the use of the orders is severely restricted to those families who are verging on the care provisions. Therefore the orders are not used very often; councils tend to use other acts and procedures.

Solicitor 2:

Again the firm was a medium sized practice, taking a wide range of cases, in a medium sized town in the south of the country.

Regarding the court system, it was felt that there were too many courts to choose from in terms of starting an action. This confusion was compounded by the lack of specialisation in the judiciary, especially in the magistrates court. The process was likened to playing for one side or the other, finding as much information about the opponent as possible with the purpose of winning the child for the parents. Joint custody was not a viable option for the parents. The lack of standard approaches to the work and standard presentation of the cases causes difficulty. The court tend to find in favour of the court welfare officer's report, so the favourability of the report to the client was again cited as central. The solicitor had reservations about the practice of the Court Welfare Officers. The solicitor had interesting views of the relationship of the client's social group to the nature of the custody and access difficulties. He maintained that over his professional life, as he had risen through the firm (he was a partner of some years), his client group has moved up through the social groups. He maintains that the lower social groups are more concerned with the custody and access disputes and are very bitter and angry around the issue of the children. As his client group has changed, he notes that the professional groups

have agreed the issues surrounding the child, and are disputing the finances and property questions with the same bitterness that the custody issues are fought with.

The first mention of the courts' attitude to parental agreement was indicated here. A parental decision is not questioned, but is interpreted as being the child's best interests. The validity of these last observations was to be tested in the main study. Clearly if the class to dispute to experience of professional was universal, the custody and access would be the starting point and never the aspiration of a career. The reaction of the court to the parents' agreement would call into question both the duty of the court to pursue the child's best interest and the right of the state to impose its will on certain groups of parents. Clearly the danger of the forced agreement to avoid the uncertainty of the court case could be enormous. The question of where the child's interests are decided and by whom, and with what safeguards emerges. The parents should also be considered. We have noted above the emotional context of divorce; could the pursuit of an agreement when the image of the partner is distorted by the initial anger and bitterness of separation push the parents into a position from which they cannot recover an accurate image of their former partner as a continuing parent. The question of the impossibility of a divorce / custody access process which begins to move like a juggernaut, being forced upon parents at a time when they need help from the law in a reordering of their lives in a timeless way caused a question to emerge: *should the law get out of family matters and make way for psychology and a medical model of caring for people according to their need?* This also triggered the question is law a social device to fit people into its own definition, or is it a method of channelling resources to the needs of the individual. Perhaps paternalism needs to be examined with the latter perception of law rather than immediately presuming the former.

It should be noted that in neither of the areas in which the solicitors practised

was there a conciliation service. At this early stage in the research, the existence, or at least extent of the conciliation was unknown to me. The attitudes certainly reflect a non-conciliatory bias.

Court Welfare Office: 1.

In the preliminary interviews a court welfare office in an adjoining region was visited to allow a set of basic facts to be established. Two officers were interviewed. The basic constitution of the court welfare service was discussed. The service was established within the Probation service, specialising in the civil work which had previously been part of the general brief of the probation officer. There is a great deal of difference in the approaches taken to the work across the country; there is little centralization or direction beyond the individual offices.

The work is given to the office through the section 41 hearings, and through the general court work in custody and access. The working method established by this particular office practice an initial joint mediation with the couple, and then have their own reporting style. The officers are trained initially as probation officers, and then the move to specialisation, for the two subject officers, found training by experience and occasional days of training: the feeling was that the training was and is piecemeal. The officers felt that in relation to the other professions, while doing a distinct job of reporting and conciliating, solicitors tended to see them as underlings, whereas the other social workers did not display a bias. The interview, while not giving a detailed synopsis of the rôle of the welfare service nationally, or even of the specific service, it did unwind some of the lack of detail and perhaps even mystique which one can find in the legal textbooks surrounding the service. There are clearly issues from this interview which went forward into the main questionnaire.

Educational Psychologist.

As a balance to the interviews with lawyers and other para-legals, it was felt necessary to investigate the current place of practising psychologists in the custody and access process. Initially an educational psychologist was interviewed. There are varied practitioners in the field of psychology. Educational psychologists tend to work either free-lance for, or in the direct employ of the education authority. There are also clinical psychologists working within the health service, and a psychological and psychiatric service. This can be either public or privately funded.

As an educational psychologist, the work tends to be referral via the child's performance at school, identifying the child as the problem bearer, and as abnormal within the peer group. There are clear financial constraints on the service, making the private / public distinction crucial. If the parents can afford private help from an educational psychologist the feeling is of gaining a service - the cost of employing the profession restricts its availability. In the public arena, the referral would be a more desperate measure; the new resource implications of self regulating schools would make the widespread and constructive use of the benefits of psychology an expense beyond the school. The danger is that the child will become a burden to the school if an educational psychologist would be useful to the child; the school may start to chose children who are not in the "problem" category. This will have the obvious problem of producing ghettos in the school population. The second change in the education policy of the 1980s was the *core curriculum*. This has, in the experience of the professional interviewed, pushed the emphasis from the psychological nature of the work and emphasises the education.

There is very little documentation, or legal provision for psychological help with divorce and separation difficulties. The educational psychologist was therefore

asked about the nature of referrals, if indeed separation and divorce figures in the problems seen in the course of educational psychologists. Children are presented to the educational psychologists through their inability to adapt to school life, for example in terms of behaviour. The presence of a separation problem will be veiled in the terms of an educational, school-centred problem, rather than one of family system collapse or redefinition. It is also defined as a child problem, rather than a child reaction to an adult or family problem. There are however roots of the education problems, in the family relationships. The separation and divorce problems are seen as a reaction to the changes that have occurred in the child's life, and therefore could well occur in a long time scale after the legal issues of the separation are completed. The court itself does not seem to cause a great deal of psychological harm for the children, as they tend not to be present at the court. To this point in the research the psychological implications of divorce had been centred around the court and legal process. Clearly there are some implications of the stress surrounding the process of the law, but this can be seen more constructively by asking questions about the assumptions and goals of the legal process, and then using a broader definition of the psychological understanding of the problem, and then to create the law around this definition.

One of the major difficulties outlined by the educational psychologist was that of the pursuit of immediate wants by the parents, which see only their interests and define the child's interests if they see them at all, within their understanding of their emotional difficulties, and their separation. This definition, in the view of the interviewee, has to be shifted towards a realistic examination of the expectations of the individuals involved in the separation. This was reflected in a threefold process of separation, divorce, and growing up. In this cycle the divorce cannot be seen as a one-off decision as the children and the new family arrangements are not static. It is part of their psychological need that the

change in the child's growth be reflected in the arrangements developed around them. The feeling was that there are certain basic welfare issues that a child has rights to, but the greatest or more subtle welfare needs of the child were individuality and growth. In the growing up stage there was a feeling that access arrangements were not good as they gave a rigidity to the child leave the child and custodial parent to live through their prejudices; the growth stage is hampered as the relationships are stuck in a false situation. The feeling was that access should be largely child led.

The major difficulty is that the parents are not educated enough in parenthood to be able to see what the best interests of their child are. This is compounded by the importance of learning through rôle models. There was a feeling that an improved personnel of lawyers trained in psychology and a behavioural scientist would go some way to help the threefold problem of the definition of the child's rights in the subjective eyes of the parent, the improvement of the parents' understanding of the child's needs, and the understanding of the growth of the necessary relationships after the divorce. By addressing these problems there was a feeling that the ground would be better prepared for the successful mediated settlement.

The feeling was that the divorce, or collapse of the family system which the child was used to was a major stress situation in the child's life. The crucial factor is the child's coping ability. If the child has not learnt the necessary rules about coping at its developmental level, it will "crash" in a major stress situation. There is a second line to the work of the psychologist in defining the child's need to grow up and react to situations at the level appropriate to its development, rather than the level the adults wish them to suddenly raise themselves to: the child must be allowed to be a child.

The psychologist explained that the divorce was a series of stresses which go on

around the legal definition of divorce. In an example, it may start in arguments possibly including fighting between the parents, possibly in front of or even involving the children, although the children can clearly see the difference in the parents even if "we don't argue in front of the kids". This comes to a crescendo culminating in a form of split; a parent will leave the family home, or perhaps the child and a parent will move out of the house. The divorce process with the lawyer will commence at a point around the crescendo. Access will begin to start in a painful and often hostile atmosphere. The child may also be required by the adults to take sides, giving their support to the attitudes of the one to the other parent - both parents may require this. It may well be part of the divorce process if not for the lawyer, for the parents, to gain a statement from the child as to their desire to live with that parent - not which parent, as the question is loaded by the parent asking the question and a status quo already existing: the child is required to take a more mature rôle in their relationship with their parent. This is rather confused if and when the parents find new partners: the child is then required to relinquish the rôle of confidant to the parent and be a child to the new couple. This may be compounded by the bitterness of adapting to the introduction of a new adult in a situation which to the child may remain a temporary hiccup in the normal family life. This will further complicate the relationship with the non-custodial parent. There is a further difficulty in that the model of family life is distorted by the experience of the separation. The period can take about five years, and over that period no equilibrium can be achieved because as soon as one regime is established, the child moves on to different needs.

Court Welfare Office: 2.

As a further exploration of the court welfare office, a second area was approached to establish the degree of difference between the geographical areas.

Again the area was not one of the two finally chosen for the study. The meeting would also give an opportunity to test some of the questions formulated for the study.

The officer had considerable experience in the service. Initial questions concerned the nature of the work. The aim of the area was largely to produce factual, realistic appraisals of the family for the court. The training of the officers tends to be a degree, followed by the C.Q.S.W., a time in probation work before specialisation in civil work. The importance of personal judgement, the gut feeling, was stressed, and therefore the need for a maturity in the officer was stressed. On the job training tended to be a process of keeping officers up to date from the management downwards, training being organised on a local and national level. A tendency for regions to share and discuss ideas and techniques was emerging of late. Training with legal professionals was identified as useful.

The practice of the officer could not be standard, it was developed personally. The officer would visit the individuals, and gain a feeling of where the interests of the child lay. Lawyers would approach, and be approached by 'phone. This particular officer placed great importance in consulting teachers of the children. Information could be given to the schools, and the schools were very co-operative in giving independent information to the officer about the child.

The type of client needing a welfare report came from both the working and middle classes. The highest social groups tended to reach agreements concerning the children. The officer found that the "lower" classes welcomed the officer as someone who would help, whereas the higher groups were more resistant, having higher demands and expectations, often encouraged by their solicitors. The officer generally found the legal representation was good, although he felt a tendency to string out the disputes of those with ability to pay; often through extra

adjournments.

The final questions surrounded the child's best interests. The officer felt that the adversarial process was expected by those going to law. To change the system which was not perfect, would bring confusion. This was a difficult issue, as the adversarial system clearly has its problems. There have been good developments in the system, for example, taking the child into the judge's chambers is seen by the officer as a breakthrough. There was a feeling that the barristers sometimes fight to win, and the system removes feeling. The clients tend to be fragile, and emotionally shattered, calling in to question their ability to make decisions.

There is a danger of confusion and emotional disturbance in separation and divorce. There are certain components of welfare and the child's best interests which the officer is looking for in the investigation for the court. The assessment is of the child's stability and bonding with the immediate parent, looking for the totality of the child's development process. The officer is not looking for a checklist of items that constitute the best interests of the child, the terms used returned to gut reactions and experience of looking for signs to gauge the feeling of the right outcome in the situation: it could not be described as a scientific assessment, neither was it based on a strong training in child theories. The signs of welfare were in a child's face; one can see joy, alarm, happiness and fear, indeed this could show if the child was developing in a normal way. There is a balance the officer was looking for in making the investigation, between emotional and physical development, and the child's reaction to the stranger - the officer. The issues of the bonding of the child and the timing in the separation were investigated; the ability to build relationships again. This was all conducted in the method of investigation - being with the family and watching the child.

The interpretation of the child's welfare given by the court tends towards the mother in the opinion of the officer. There is a reluctance to take the child from the custody of the mother, that is the care and control of the mother.

As a final question the officer was given an imaginary, limitless financial supply to develop the system of custody and access. The reaction was to stop the treadmill approach to the system. The officer wished to create a process of conciliation to a focus on the real difficulties, at the earliest possible opportunity, and in some depth, to create contracts of obligations and expectations for all those concerned in the problem. This would also involve counselling of those involved in the process of understanding the problems. It was felt that there was a reluctance to admit problems were happening to the individual, perhaps tied up with the climate of feeling in the society concerning success and failure; there was a social embarrassment involved in admitting failure, and yet there were implications of emotional and physical need in the breakdown of the family. In the area in which the office was situated, the general shift away from the matriarchal system to a more nuclear family base had made a particular impact on the work of the divorce welfare services. The previous method of surviving the rigours of family life had been to air problems and seek answers from the head of the family - the mother or grandmother. She held considerable influence over the family choices available to the couple. Today's moving society had caused the family to live over a greater geographical area, which had caused a reduction in the power of the matriarch. There was very little help in the new neighbourhoods and marital problems were internalized. This was symbolised in the perimeter fencing around the houses in the estates - whereas previously there was a spirit of support for others. Thus the acceleration in the divorce and separation rate, in the opinion of the officer, reflected the decline of the greater family input in the couples life, and the admission of the stranger into the previously close-knit communities.

This reflects the general trend for divorce to become a classless phenomena. There are however different approaches within the class perceptions of the difficulties of the relationship, and of the approach to the professional involved in the case.

A further interview was undertaken with this officer as a pilot for the questionnaire.

Conciliation Service 1.

The meeting with the first area conciliation service was to enable access to the service, and to establish their involvement within the system of separation law. The facilities were in an office outside the main city centre, upstairs in two rooms. One was used as an office for the organiser and part time secretary. This office served as a common room for the conciliators who were there at any one time. It also contained a small library the service was building up, and its records. The second room was the conciliating room. This was pleasantly furnished and decorated, with curtains, easy chairs, a coffee table, and a cupboard with books and toys for children.

The service was run on a voluntary basis, affiliated to the national family conciliation association. The service had nine volunteer conciliators who gave up time on a part time basis from their other jobs. The administrator was also a conciliator, and was the only full-time employee of the service. There was a management committee of solicitors, court welfare officers, church representatives, justices of the peace, and academics from the social work department of the polytechnic.

The aims of the service are apparent in the analysis of the conciliators' questionnaires. The service is aimed at all who wish to attend and there are a

mixture of solicitor, court welfare, and self referrals. There is a small charge for each session.

Conciliation Service 2.

The conciliation service in the second geographical area was constituted in a similar manner. The service was again a charity depending on conciliators giving time from their work for a small remuneration. Again the offices were pleasantly furnished, having an office and three conciliating rooms. The voluntary status of the service caused financial concern at all times and the provision of premises was a major drain on resources. The offices displayed many posters for information of local services, and also pictures drawn by the children. There were plenty of toys and books for the children.

The service was six years old, having some twelve conciliators, which the organiser felt was understaffed. The service offered many different programmes for separating couples. The service is independent from the national association due to its constitutional position regarding the experience required for the conciliators. The national body insist the conciliators have a training in social work before embarking on the service's training course. The service in the second study area grew up with conciliators from many walks of life and felt the national stance to be an unnecessary constraint upon the conciliator. The constitution of the service however sets minimum standards and requirements for the conciliators. These include the initial training and requirements for revision training, especially after a conciliator's absence. There is a feeling of professionalism and safeguarding of high standards of service. The feeling is strongly that a CQSW does not give experience of life and would not be a helpful criteria for the recruitment of conciliators. This is possible through the extensive and constantly updated training course.

The initial selection of conciliators starts with a training course, followed by an application and interview, and then a six week training course including two full day sessions. There follows a final selection examining the suitability of the candidate - for example do they understand what conciliation is about, or the candidate's attitudes to certain issues, for example homosexuality, or race, and to children. The service is committed to including the children in the process of conciliation to allow them to work through and adjust. If selected the conciliator embarks upon a three month probation on the job. The service operates a co-working model, therefore the new conciliator is teamed with a more experienced practitioner. There is a programme of in service training for all conciliators, organised by a training committee, and consultants. There is again a management committee drawing on individuals from many spheres.

The service offers a number of parallel services for those who are separating. A number of the conciliators offer counselling as a separate service; conciliation is about reaching agreements through a facilitated dialogue, counselling is more concerned with unpacking the experiences to enable a more effective dialogue. The two are separate and the take up for counselling is not great, but available, and creates issues similar to those surrounding the court welfare dilemma of acting as a conciliator and investigator.

The service runs periodically a divorce course, offering a series of insights into divorce at any stage of the process. In practice this was people who had already chosen to divorce. The three evenings centred on the legal aspects of divorce, the emotional aspects and then a final evening on children and divorce.

The service runs a divorce club. This started in the divorce course but has now grown into a regular provision welcoming new individuals. The initial idea was to show people the processes involved in divorce, the club now exists to offer

support in a positive therapeutic style. The success of the group depends upon the character of the conciliators, as well as their intelligence, articulation, and adaptability. The group combines a discursive element on the issues surrounding divorce, for example ex-partners and new partners, employing brainstorming sessions to explore the feelings around an issue, and to feel that the individual is not alone in feeling certain things. The group also has a social aspect and an energy of its own. The idea was mooted to run a similar group for children experiencing parental divorce.

There is a strong belief that conciliation is the answer to the divorce problems and the system to be adopted for the future, however there is the need for very good supervision and discipline within the service. part of the proof of the quality of the service is the reliability of the service and the reliance placed upon it by others. The conciliation service, as in the first area, commands high praise from the professionals working in the field. Both sample areas have close-knit legal communities. All know each other and there is a security in the fellowship of the professionals. The hiccups tend to be due to personality. The court welfare service is doing a similar job, but offers a different service. There is however a feeling of tension due to the perception of that service in the wider context of a probation service. The local solicitors vary in their approach, from conciliatory solicitors to adversarial individuals - who believe themselves to be conciliatory. This is a good thing as different client personalities will need different lawyer styles. The choice is crucial however as there is an inertia in the client to change solicitors if they make the wrong choice.

The fundamental strength of the service is its confidentiality and the respect it commands within the canon of practitioners in the field. Inter-agency confidentiality is very strong in both conciliation services. This is made more difficult by the overlap of professionals in a small community of professionals,

and in a community which wears many different hats. The professionals may well be involved in divorce club as well as acting as the solicitor or conciliator. Thus strong boundary lines are drawn and then managed. The service does make use of conferences with the other professionals on a very informal and confidential nature. If a particular problem emerges the individual conciliators tend to seek advice within their own group and also outside amongst their contacts in other professions.

The confidentiality of the service is very important in court referred cases, as anything can be said in conciliation and it cannot and will not be reported to the court or the welfare officers. This is of course different to the court welfare team who are bound to make a report to the court. The reality of the voluntary nature of conciliation was also questioned. The organiser stressed that there was a voluntary attendance, but it was strongly advised or recommended by the solicitors, and if the individual chose not to attend, the court welfare office would be invited to make investigation. On the other hand the service was available on a self-referring basis, offering support should agreements breakdown.

Through the service, a pair of family mediators work, trained by the Family Mediators' Association. This is a separate function but offers a new element to the range of experiences in the service. The service also offers a supervised access facility. The condition is that the couple are also referred at some time for conciliation, and the basic rationale is to move towards a future of reasonable access without supervision, Although this is a long term goal as the level of conflict is so high in the couple. This has a useful funding element for the service, as the provision of access centres is difficult and to offer it as a part of a wider package is a bonus. There are many fathers who wish to protect themselves by supervised access with their children.

The service also runs a Family Breakdown Centre in a local council housing estate. The estate has many family and family related problems and therefore the service saw the need for a project offering help to the families in their locality. The project offers child-centred advice and counselling. The problems range from how and when to tell children about the parents relationship problems, to access disputes. The clients tend to be one side and not both, and there is only a small take up, probably because of the "counselling" image.

In another area of the city, the service offers conciliation with adolescent problems of any nature, not just divorce. The referral system is via the parents and often through their appeal to social services for help. The approach is very much family oriented.

The root of the work is certainly the conciliation, the other projects stem from that root as the need becomes apparent. This is very much the case with the provision of counselling. The organiser described the number of referrals as enormous - higher than the number for conciliation. Referrals came in large numbers from doctors' surgeries.

The clients asking for counselling are aware that the children are not the dispute but the dispute is centred in the parents attachment. The direction of the counselling is very much open to the client. The service is careful to appoint a different conciliator and counsellor to the same individuals to preserve confidentiality between the two. The feeling was certainly that many clients needed more in depth help in their experiences than the rather more short term function of conciliation. Conciliation is concerned with the establishing of agreements and the dialogue of decision making. Counselling is concerned with the ability to participate in the dialogue. There is a low take up of counselling by individuals entering the service for conciliation. They tend to be two different sets of people. The experience of the conciliation group is the long

wait for *Relate* counselling. The conciliaion service offer crisis counselling in the service, on a walk-in basis. The aim is to provide one agency commanding the clients trust.

The service does not have a structured approach to the child's best interests. It is used as a reminder when the clients get stuck in their dialogue. The organiser's feeling was that it was a dangerously simple sentence, which one could not often see an answer to if at all. The child's best interest had such elements as the continued involvement of both parents but did not have a set of objective items. It is about attempting stratagem and avoiding damaging the children. The law offers a single decision, whereas the need is for an open door policy allowing ideas to be attempted and decisions modified in the light of new circumstances.

Court Welfare Service 3.

The court welfare service in the first geographical area of the major study worked as an investigative team, although their approach differed from the officer *number 2* above. Two of the officers in the team attempted to co-work, although they appeared to have a case load which prevented this as a permanent working model. All the officers attempted some initial negotiation within their working strategy, this was not however formal conciliation as the parents were often seen singly. The officers were very keen on the latest theories of talking to children, and using play as a vehicle for assessing the child. The training was the classic civil work training, and the budget for in service training was not great. The accommodation was not of the highest standard and the design could well have been around the function of officers going into the community to meet individuals rather than their coming to meetings in the office.

Court Welfare Service 4.

The second court welfare area in the major study operated a much more social work oriented approach to the job. The main task of the officers is to produce a settlement through techniques of drawing the family together into a dialogue, under the auspices of a compulsory court welfare report session. This throws more ethical problems into the debate, but it seems to allow a different more family therapy type approach for the clients to use. The officers all co-work, developing their own style within their teams. The variety in national court welfare practice comes from the ambiguity of a national structure with little central control, promoting a pride in the autonomy of the 56 probation areas. There is a second dimension in that the court welfare office falls between the two government departments; the home office, and the Lord Chancellor's Department. The difficulty is that there is little communication between the two departments of government, but a great overlap in the work of the officers. This only reflects the wider difficulty of divorce which seems to draw together within an arena claiming a clear set of rules of engagement, a set of professionals with very different structures and cultures, to thrash out a problem which has no real ground rules. The law is one sentence: the welfare of the child is paramount. The various professional cultures have their own languages and understandings of the problem - their own preconceptions and analytical frameworks - but the law does not contain the basic theoretical framework within which the different traditions can create a common dialogue. This creates uncertainty which causes the professionals to defend their traditions creating a mystification rather of the abilities of each group rather than the clarification of what each professional can and cannot do.

There is a need for a good, national policy upon which the professional procedures can be constructed. The lack of as clear understanding of the policy of the service has led to the emergence of widely differing theoretical standpoints

between different areas. There is a legalistic approach, investigatory and guessing what the judge wants to hear, and there is the co-working, family therapy model. The view of the process and especially the court can be clearly seen here; indeed the two approaches to the law generally can be seen.

The particular officer who is the senior officer at the study office outlined some of the philosophy behind the model. The key is the language of the questions which reflects the underlying philosophy and the historical culture of the service and the personal understanding of the officer within that culture. The neutrality of the officers is stressed. The team is using co-working to give an extra dimension to the officer's ability to devise and see new stratagem and to check the input of the particular officer. The model used is a bereavement model of recovery from separation. The question is a subtle non-directive form, to enable the officer to understand the nature of the complex situation. This contrasts directly with the pragmatic model of the lawyer who sets up the trust of the client around the premise of gaining the best deal for the client. The adversarial model or evidential model used directed questioning to illicit specific facts; the worker is alone, perhaps compounding the stress of working within an emotional area of law and so building coping stratagem to avoid the entanglement with the emotion as there is no other individual to share the reaction to the emotion with. Thus to avoid internalising the emotional reaction, the solo worker must avoid unlocking it in the first place, and therefore use a highly controlled model.

Psychologist 2.

The second psychologist in the study is involved in child centred disputes as a clinical psychologist asked by one or other party to participate in the proceedings as an expert witness. Giving the impression of a free spirit, the job seemed to be that of a trouble shooter highlighting difficult issues as an objective outsider. The language of the interview was that of games,"scoring

points off the lawyers".

The work of advising and assessing in custody and access cases is a growing area of work for psychologists, however there are relatively few of the 4, to 5,000 clinical psychologists, spending time in the area at present. The interviewee had entered the realm of the legal psychologist through personal injury work. This is an area of work for lawyers and psychologists. The potential for psychological evidence in custody and access cases is more recent. The psychologist's case-load is around 15 to 20 cases requiring expert evidence, of which two involve children, one case being care, one matrimonial - the remaining cases are personal injury issues.

The psychologist outlined a number of reasons for preferring the work in the child custody field: in personal injury the method of working was becoming more codified, as one would expect as the law becomes more developed in an area, this brought a constraining feeling for the psychologist. In the personal injury cases that are contested in court, there is an increased likelihood of a Queen's Counsel appearing for one of the sides, reflecting a growth the compensation sums and the increasing complexity of the law in the area. One could "rarely get away without being savaged". Personal injury was largely fought in the county court affording strict control over the process, however the psychologist was asked to appear in the custody and access cases in the magistrates court where a greater control could be exerted over the proceedings, and indeed the level of questioning was lower - there was a greater informality allowing greater opportunity for "you to run the show".

This simply reflects the fact that the expert witness in custody and access disputes is a relatively rare phenomena, and as the subject has few precedents, the issue remains much more one of evidence rather than one of law. There is

little likelihood that the constraints on the psychologist will come with rules of process, there is the concern however that if the courtroom sees conflicts of expert evidence, the custody and access dispute will increase its adversarial nature. The attitude of the psychologist was that the area was for evidence to a legal decision, and was a growth area.

The invitation to participate in the dispute usually came from one side or the other. The intention of gaining a psychologist's evidence was adversarial - to gain a lever in showing the other party to be a less competent parent, and thus compelling the court to find for the former. The psychologist however made it clear that his individual working practice meant that any report would be impartial, based on the child's welfare. Thus a court would be presented with a more rounded appraisal of both sides; or the psychologist would not be called; or the other side would call the psychologist after finding the report favourable to their case. The report and the methods used and indeed the evidence presented came from no formal training beyond the qualifications of psychologist - there was no legal training, rather the rôle is "picked up". There was no central guidance as to the job of the expert witness.

The interviewee noted that there was a great tension in divorce:

*All the love points before the divorce become hate points after the marriage
"He worked 14 days a week so they could have a nice home" becomes "he
never had time for us."*

The couples' tensions tended to be centred around access, and custody becomes drawn into the quiver of the dispute as a weapon in the access quarrel. The dispute could flare-up around any number of issues, from an allegation of sexual abuse of the child, to the fact that the child spoke in a different way with the

other parent. The dispute largely reflected old grievances and essentially bad relationships. It was the interviewee's belief that there were two factors in parental breakdowns: sex and economics. The separation would centre on one or the other. The interviewee also felt that as part of the armoury of the bitterness of the couple, mothers were refusing access to the father knowing that the court would threaten but would not remove the child or imprison the mother: there was ultimately no punishment for the mother if she jeopardized the access of the father. The psychologist felt that it would not do any harm to imprison the mother for contempt. There would be no real separation damage for the child, and the scare would change the attitude to the issue in the mother.

The intension therefore is to keep access and custody disputes out of the court, which is in line with the lawyers' thinking as courts are inherently unpredictable fora. There is also the element that court orders do not solve problems, and the family will return to court once it has broken down.

Concerning the content of the psychological input, the interviewee was keen to show that there are fewer psychological problems than are claimed. A bed wetting may be the symptom of psychological harm on an access visit, but it may equally be the result of too much orange juice, or a change in diet, or another physical symptom. The psychologist can offer an understanding of this and show that there is "a lot of scope for common sense". In terms of the best interests of the child, the need for routine was stressed; if asked to comment on arrangements, the routine and disruption to routine were crucial as change may damage the child. However it was also stressed that the child was not always a fragile angel, and children could be manipulative. There was a feeling that the child may feel that:

When I'm not near the parent I love, I love the parent I'm near.

This would distort the responses of the child but also reflects the child's adaptability. The crucial issue for the psychologist was the need for one's roots; finding one's natural parents. This is a thread that runs through the child issues and the law, for example in adoption and care issues.

The Pilot Study.

The pilot study was undertaken with a small number of individuals. The opinion was that the questions had been framed out of one year's reading, and more importantly out of the discussions with practitioners. Thus the pilot study was a check on the questions and format of the work, but it was part of the sample, and the results should be taken as part of the evidence gathered. The pilot was first tested on a court welfare officer in an outside geographical area, the second and third was conducted in the study area. The results from the first, given that the questionnaire was an experience gathering instrument as opposed to a quantitative instrument could be seen to be working relatively quickly. Indeed no revisions were seen necessary after the pilot interviews; the range and depth of the information being gathered was felt to be appropriate.

Court Welfare Officer 2.

On a second visit to the officer the questionnaire was tested. Given that many of the views of the officer were already known after the first interview, the questionnaire could be tested for its ability to allow the views to come out, and to see if further impressions could be gained from the officer. The opportunity could also be taken to develop an interview style using the questionnaire.

Solicitor 3.

The purpose of a further interview with a solicitor, this time within the chosen

study area, was to pilot the questionnaire. the solicitor then took part in the main study, given that the questionnaire had worked well, and an analysis of the answers appears in that section of the work. It became apparent that the questionnaire would take a considerable time to complete, but all those who agreed to participate wished to give up time to complete the work and welcomed the opportunity of standing back and discussing what their job entailed. Later in the study a group of solicitors emerged who wished to participate but could only spare a half hour for the interviews, and therefore an alternative interview was adapted to maximise the time - all the solicitors did however complete the questionnaire so the loss was one of the subtlety, but it is felt that the limiting of the time period concentrated the most useful questions and comments rather than lost them.

It emerged that the process of divorce and child applications in the study area (1) was to apply to court for the particular action, this would be followed by the appointment of welfare officers reports, which would then be followed by the affidavits. In other areas affidavits are gathered immediately after the application to the court, the welfare report following at the last point before the court. Thus in area 1, the tendency is for all the child issues coming before the court to have a welfare officer's assessment. This enables the lawyers and the couple to bargain with an independent assessment, and gives a good indication of the outcome of a court as the welfare report is of great importance to the judge and is only contradicted in exceptional cases. The solicitor indicated that the welfare report would make or break the case, and decisions of how to proceed were taken at the affidavit stage; the evidence and game plan was influenced earlier than the report last model.

The solicitor indicated that there was a balance which could be very difficult to maintain, between on the one hand the sentiments of the solicitors' family law

association to act in a conciliatory manner and avoid conflict, and on the other prepare for a courtroom situation that depended on evidence and the best parent attitude. This constantly emerged as the dilemma for the profession. The solicitors very often said, unless they were engaged in the conciliation services directly, that the conciliators and court welfare office were the place for the parents to thrash out child differences, if they failed there - and they would always encourage their clients to go to such services - the game was shifted to one of evidence and fighting, which they would be forced to engage in. Conciliatory practice was in the way a negotiation with the other side was conducted; the claim was generally that nasty letters and heated 'phone calls were only used by the unscrupulous practitioner. There was a strong feeling from this solicitor and many other practitioners that the question of the best interest was for the parents to decide and in the absence of their decision, for the courts to decide, and not for the solicitor to investigate; the solicitor is instructed by the client. This brings another central dilemma to the solicitor, namely the relationship held by the practitioner towards the client who is the parent, and the child whose welfare is paramount. The solicitor felt the practitioner's rôle was that of mediator - to enable a dialogue between individuals - while having a duty to the interests of the client. The child was protected by the court welfare officer, and the practitioner has a duty to keep the child in mind.

There is a strong need, in the opinion of this solicitor, that dialogue should be initiated at an earlier stage, and that there should be a greater input from psychology into the system; a greater understanding by solicitors. This would not work for some clients who are beyond help, in the opinion of the solicitor. Some clients cannot see the child's interests as they have such strong hatred for their former partner - indeed some have strong feelings of excluding their former partner altogether, such is the extent of their animosity. The solicitor felt that in many cases of such hatred the level of unreasonableness was incredible on both

sides; it was almost a despairing as the future of the couple was very clear; they would spend the rest of the child's young life fighting over the custody and most vehemently over the access arrangements, and would never find agreement. Indeed a great number of the solicitor's cases never closed, the fight over access continuing for many years, continually flaring up and going to court.

The questionnaire was used with all the professionals.

It should be noted that the questions 8 and 9, in part two, and 12 in part three were only given to the solicitors.

DECIDING THE BEST INTERESTS OF CHILDREN:
PROFESSIONALS' QUESTIONNAIRE.

1. BIOGRAPHICAL.

a. Experience.

1. How long have you been involved in custody and access disputes?

----- years

2. What is your current custody and access caseload?

----- cases/month.

Is this your usual average YES/NO

If no, please indicate the usual figure. -----

3. Is this the sole type of case that you deal with? YES/NO

If no, what other areas do you cover?

b. Training:

4. Please outline your basic training, indicating how much time the training took.

5. How much of each of the following did your initial training include?

These are of course relative to length and intensity of the course.

	none.	a little.	a lot.	all.
Law	()	()	()	()
Psychology	()	()	()	()
Counselling skills	()	()	()	()
Conciliating skills	()	()	()	()
Social work	()	()	()	()
Report writing	()	()	()	()
Other (please specify)	()	()	()	()
-----	()	()	()	()
-----	()	()	()	()

6. Do you have to attend "in service" training? YES/NO

If yes, how often?

----- times per year.

7. Is the option available if such training is not compulsory?

Do you attend?

YES/NO

YES/NO

8. Who organises the training?

9. What does it entail?

Teaching methods?

Lectures ()

Seminars ()

Role play ()

other -----

Subjects covered?

Law ()

Psychology ()

Counselling skills ()

Social work ()

other -----

10. Do you find the training useful? YES/NO

Why?

12. Would you welcome a greater availability of training in other related disciplines? YES/NO

Which ones, and for what purpose?

13. What skills are important to your job?

2. YOUR ROLE IN CHILD CUSTODY AND ACCESS DISPUTES.

1. Who do you regard as your client?

- Parent ()
- Child ()
- Court ()
- other (please specify) _____

2. At what stage of the matrimonial dispute are you invited to start work?

3. At what point does your work in the case end?

4. Will the clients have seen other professionals before you? YES/NO

Which others? _____

What differences can you see between clients if they have seen other professionals before you?

5. Do you find that the views and advice given to your clients by other professionals in the process has any bearing on your work? YES/NO

In what ways? _____

6. Do you discuss the case with the other professionals involved? YES/NO

Which ones, and by what method?

Letter (L), Phone (P), Face to face (F).

	(/)	(Method)
Solicitors	()	()
Barrister (for your client)	()	()
Barrister (for the other parties)	()	()
Court Welfare Officers	()	()
Conciliation service	()	()
Others (please specify) _____	()	()
_____	()	()
_____	()	()

7. Do you use case conferences to determine particular issues?

YES/NO

Which issues? -----

Who participates? -----

Is this a useful method in dealing with the issues in these cases? -----

Please indicate advantages or disadvantages:

8. In a custody or access dispute which is taken to a court hearing, which court do you prefer to use?

	Magistrates'	County	High court
Custody	()	()	()
Access	()	()	()

Why ? -----

9. Is there a conciliation service in your geographical area?

YES/NO

Who is it run by? -----

Do you invite your clients to go to conciliation?
ALWAYS/SOMETIMES/NEVER

What factors influence you to advise conciliation to clients? -----

Do you find formal conciliation between the parties useful in your work as the lawyer?
ALWAYS/SOMETIMES/NEVER

In what way? -----

Which issues is conciliation best suited to?

3. TYPE OF CLIENT

1. How many times would you expect to see your client in the course of a "normal" dispute?

Divorce -----
Custody -----
Access -----

What would cause this "norm" to be modified?

2. Of the cases you see, how many of the divorce cases include children?

<30% about 30% about 50% about 70% >70%
() () () () ()

3. Please indicate the variety of social groups that your recent (over the past year) clients have come from.

Where: I = professional IV = semi-skilled manual
 II = manegerial V = unskilled manual
 IIIa = Skilled non-manual VI = never employed
 IIIb = skilled manual

4. Please indicate the distribution of the spouses within the age groups:

Where: group 1 = under 20 years
 2 = 20 - 29 years
 3 = 30 - 39 years
 4 = 40 - 49 years
 5 = 50 - 59 years
 6 = over 60 years

5. Has this distribution been the same throughout your career in this area of work? YES/NO

If no, how has it changed?-----

6. Do you find any link between the age of your clients and their social group? YES/NO

Please indicate the links if any patterns occur.

(e.g. young people tend to be of x social group etc.)

Also, please mention if these have changed over your career.-----

7. Please indicate the types of approaches your clients display towards the custody and access issue.

Please indicate using the number you most closely agree with:

- 1 = none
- 2 = a few
- 3 = some
- 4 = a lot
- 5 = all

No dispute

- decision already agreed with spouse ()
- Spouses willing to make agreement; need help ()
- Spouses are hostile to each other ()
- Spouses seek a court decision before they feel they are properly divorced; a symbolic fight ()
- Spouse uses the custody and access question to bargain in other areas of the dispute ()
- Other. (please indicate) ()
- ()
- ()

8. Do you find that certain attitudes towards the matrimonial proceeding are found in clients of different age and social group? YES/NO

Please explain.

9. Do you find that clients have developed a new type of relationship with their former partner which will allow them to work together in their separation, when they initially come for advice?

- A large majority ()
- Over half ()
- Under half ()
- Very few ()
- Don't know ()

If the spouse's perception of their former partner changes do you find that their perception of the dispute changes?

- A lot ()
- To some extent ()
- Not at all ()

In what ways does this manifest itself?

10. Do you feel that your role includes helping the client to develop an understanding of their marriage breakdown?

- Often ()
- Sometimes ()
- Never ()

What determines this approach?

11. Do you ever involve other professionals to help your clients come to an understanding of their relationship?

YES/NO

Which ones and when? -----

Why did you start to use the other professionals?

12. Do you ever find it necessary to advise clients against starting the action they wish to pursue?

	Often	Sometimes	Never
At the first interview	()	()	()
After conciliation - if conciliation available.	()	()	()

Why? (at first interview) _____

Why? (after conciliation) _____

4. THE BEST INTERESTS OF THE CHILD.

1. Do you feel that you should ask what are a child's best interests? YES/NO

2. Do you have a standard practice or approach that you use when dealing with the best interests of a child in a matrimonial case? YES/NO

How did you develop the practice or approach?

3. Do you see the child if you feel it can understand what is going on? ALWAYS/SOMETIMES/NEVER

From what age do you feel a child can usually understand and be involved?

----- years old.

If you see the child, do you see the child:

	always	sometimes	never
alone	()	()	()
with siblings	()	()	()
with mother	()	()	()
with father	()	()	()
with both parents	()	()	()
with the family together	()	()	()

Would you see the child with only one parent and not the other in the course of your interviews?

YES/NO

Do you always see the whole family together, or at least the child with both its parents?

ALWAYS/SOMETIMES/NEVER

What circumstances will influence your choice when and how to interview the child?

4. Apart from the parents, which other people do you interview in relation to the child's best interests?

	always	often	sometimes	never
Grandparents	()	()	()	()
Other extended family	()	()	()	()
Parents' new partners	()	()	()	()
Family friends	()	()	()	()
Teachers	()	()	()	()
Neighbours	()	()	()	()
General Practitioners	()	()	()	()
Health visitors	()	()	()	()
Informal caretakers (eg. Club leaders etc.)	()	()	()	()
Others (please specify)	()	()	()	()
-----	()	()	()	()
-----	()	()	()	()
-----	()	()	()	()

5. In an average case, how long do you devote to discovering the child's best interests?

----- interviews / case
 ----- hours / interview

What causes this pattern to change? _____

6. The standard practice, if you have one, that you adopt may well include other approaches, please indicate any other approaches or practices that you use?

7. Do you feel, in some way, that the child is your client, if its parent has sought your advice? YES/NO

In what way? _____

8. Does it sometimes seem to be the case that your role for the parents, either jointly or separately, may be at odds with the child's best interest?

ALWAYS/SOMETIMES/NEVER

Is it your job to reconcile those differences?

YES/NO

If not, who should address such problems?

9. In your experience, do parents make arrangements, or seek decisions that are not in the child's best interests?

ALWAYS/SOMETIMES/NEVER

How often? about _____%

Where are such conflicts resolved? _____

10. In order to make assessments of the child's best interests, do you seek reports from other professionals?

YES/NO

Do they help your assessment?

YES/NO

In what ways are they inadequate for your needs?

11. Would you ever envisage using psychological assessments and principles, in attempting to define a child's best interests if they were made available to you?

YES/NO

Why? _____

If you already use assessments please indicate which ones (if it has a name):

12. Would you welcome the involvement of Psychologists in the area of assessing a child's best interests?

YES/NO

Why?

13. In your opinion, does the law creates an undesirable tension by requiring the sanctity of the child's best interests?

YES/NO

Please explain

14. The following statements are derived from principles expressed in the caselaw of custody and access.

In assessing the child's best interests, please indicate on the scale how far you agree or disagree with the statements.

Strongly agree Neutral Strongly disagree
 1 2 3 4 5

Please indicate your response by placing the appropriate number in the () provided after each statement.

a. The parents are best placed to decide their child's future circumstances. ()

b. The individual circumstances of the child and its family should be examined in detail, to find the child's best interests and the capabilities of each parent for future caregiving. ()

c. The role of the lawyers in matrimonial disputes concerning children should be to ascertain the ~~best~~ wishes of their clients. ()

d. There are objective standards that each child should enjoy, and these are its "best interests". ()

e. The mother has abilities that make her best suited to the role of carer of the child. ()

f. The child will be best placed with other siblings. ()

g. A child should be shielded from its parents' arguments, as this will shield it from harm. ()

h. A child should not be consulted in the parents' separation process; it is happiest when it is told simply where it will live and what will happen. ()

i. As soon as the child is able to express itself, its views are crucial in determining its best interests. ()

j. It is better for the child to see the visiting parent for a more frequent number of short periods, than to have longer periods of staying access at intervals. ()

k. Splitting the siblings may not necessarily damage the children. ()

l. A young girl is better off with her natural mother, but a boy may be better placed with his father. ()

m. The rôle of the father can adequately be fulfilled by access visits. ()

n. Access should be designed so as to fit the parents new lifestyles. If this entails irregular or unreliable visiting, or no visiting at all, then that is for the parents to decide. ()

o. A new partner for either spouse may make a clean break with the other most desirable in the child's best interests. ()

p. The new partner should be seen by the court to determine their suitability in meeting the best interests of the child. ()

q. A father who develops a strong relationship with another woman may be better placed to meet the child's best interests than a father who remains single. ()

r. Maintaining relationships that have developed with the child are crucial to its best interests. ()

s. Custody with the mother should never be presumed: the decision must be examined on the grounds of the future ability to care for the child to the highest available standard. ()

t. Religious disputes between the parents should only effect the custody, or access decisions when the child is in real physical or emotional danger. ()

u. Access is the right of the child and therefore cannot be decided on whether or not one party will see the other; the parents should not be allowed to use access as a weapon against each other. ()

v. The 'conduct' of the parties is important in determining the arrangements for the child. ()

w. A child can very quickly adjust to the stress of divorce and separation. ()

x. It may be in the best interests of the child, to explore the use of supervision orders or care, as options in custody and access disputes. ()

y. Divorce is a period of changing relationships for all members of the family; the system must therefore look to providing help for the future welfare of all participants and not just that of the children. ()

z. The paramountcy principle of the child's welfare does not allow for the reality of the divorce settlement to be addressed, which is more concerned with property and financial arrangements between the adults. ()

15. Please indicate, from your own views, the importance you believe each of the following have in relation to a child's best interests.

Please indicate the number of your response:

- 1 = very important
- 2 = fairly important
- 3 = neutral
- 4 = fairly unimportant
- 5 = irrelevant

	1	2	3	4	5
Discipline	()	()	()	()	()
Balanced diet	()	()	()	()	()
Play - alone	()	()	()	()	()
Praise	()	()	()	()	()
Confidence in ability	()	()	()	()	()
Ability to relate to others	()	()	()	()	()
Play - with adult	()	()	()	()	()
Love	()	()	()	()	()
Affection - cuddles etc.	()	()	()	()	()
Intellectual stimulation	()	()	()	()	()
Good schooling	()	()	()	()	()
Economic stability	()	()	()	()	()
A feeling of self worth	()	()	()	()	()
Ability to share	()	()	()	()	()
Material comforts	()	()	()	()	()
Ordered lifestyle	()	()	()	()	()
Peace and quiet	()	()	()	()	()
Mother - child bonding	()	()	()	()	()
Father - child bonding	()	()	()	()	()
Continuity of attachments	()	()	()	()	()

16. Do you think that some of the aspects of care above are the function of one parent, specifically the male or the female? YES/NO

Place the initial M (mother) F (father) or M&F to the right of the number 5 box for each concept to indicate the hypothetically best provider.

17. Please indicate the type of characteristics that you look for when assessing a child's best interests.

15. Please indicate, from your own views, the importance you believe each of the following have in relation to a child's best interests.

Please indicate the number of your response:

- 1 = very important
- 2 = fairly important
- 3 = neutral
- 4 = fairly unimportant
- 5 = irrelevant

	1	2	3	4	5
Discipline	()	()	()	()	()
Balanced diet	()	()	()	()	()
Play - alone	()	()	()	()	()
Praise	()	()	()	()	()
Confidence in ability	()	()	()	()	()
Ability to relate to others	()	()	()	()	()
Play - with adult	()	()	()	()	()
Love	()	()	()	()	()
Affection - cuddles etc.	()	()	()	()	()
Intellectual stimulation	()	()	()	()	()
Good schooling	()	()	()	()	()
Economic stability	()	()	()	()	()
A feeling of self worth	()	()	()	()	()
Ability to share	()	()	()	()	()
Material comforts	()	()	()	()	()
Ordered lifestyle	()	()	()	()	()
Peace and quiet	()	()	()	()	()
Mother - child bonding	()	()	()	()	()
Father - child bonding	()	()	()	()	()
Continuity of attachments	()	()	()	()	()

16. Do you think that some of the aspects of care above are the function of one parent, specifically the male or the female? YES/NO

Place the initial M (mother) F (father) or M&F to the right of the number 5 box for each concept to indicate the hypothetically best provider.

17. Please indicate the type of characteristics that you look for when assessing a child's best interests.

18. Do you ever use a checklist similar to question 16 in practice?

YES/NO

Would such a list be useful in your work? YES/NO

Why? -----

19. Do you think that the law actually determines the child's best interests?

ALWAYS/SOMETIMES/NEVER

Why? -----

20. Do you think that you succeed in arranging a situation in which the child can obtain its best interests?

ALWAYS/SOMETIMES/NEVER

Please explain.

21. Please add any further comments you may wish to make.

Appendix A.3.

Court Observations.

Five court observations were made in one of the study areas. The observations were arranged by one solicitor, and were made by accompanying the barrister or solicitor for one of the parties at court. The pattern therefore allowed the clients on one side of the dispute to be met, and the process of the court negotiations and hearing to be observed. The observations gave an opportunity to gain a feeling for the atmosphere of the courtroom custody and access dispute, and for something of the attitude of the clients towards the dispute and their former partner. It also gave the opportunity to observe the approach that one solicitor adopts in preparing for a court appearance in this area of the law; observation was made of the interview with and statement taking from a witness before the hearing. In the cases observed the files were also read to give the full history of the disputes.

Observation 1.

In the first case the parties had been divorced for a short time. The issue before the court was twofold: the father alleged the mother's new boyfriend who was in contact with the child had a history of violence with the possibility of sexual abuse of a child of his ex-wife, and therefore the child was in danger if the mother continued to have custody of the child and to see the boyfriend - the father applied for custody of the child; a second issue concerned the mother's refusal to allow the father access to the child which had occurred due to the father's failure to pay the maintenance agreed - the father claimed for access as a secondary point to the custody question - the mother claimed the maintenance which had not been paid by the father. The dispute came before a county court judge sitting in the registrars' court.

The ex-wife of the mother's new boyfriend was willing to assist the father's claim. She had been assaulted by her ex-husband and her child had been assaulted and she believed sexually assaulted by him. She gave a statement outlining the nature of the assaults to the solicitor acting for the father in the present case. The violent nature of the man was of great concern to the father and the custody claim was a genuine claim to look after the child with the help of the child's grandparents who already assisted in the father's access visits. The father had been involved in a fight with the mother's boyfriend and both had been charged with assault and were awaiting the trial for this charge. The matrimonial problems had been before the courts before and had not reached a conclusion. The mother and father would not communicate with each other, although they had been getting on well before the mother's relationship with the boyfriend.

The Judge initially heard the father's application for custody. The statement of the witness (the ex-wife) had not been given to the mother's counsel and a question of the admissibility of the evidence was emerging before the judge refused to hear the evidence of the ex-wife on the grounds that the issues and the child to which the assaults referred were different to the child concerned in the present dispute. The father could not maintain or prove allegations of potential harm to his child without the witness, and therefore counsel for the father moved to a short adjournment to review and negotiate the position. Thus the allegation was left for care proceedings should the fear become a reality for the child.

The father felt aggrieved that the concerns he felt to be genuine had not been heard by the judge - he had not been given a chance to bring his witness. The barrister's opinion was that the custody point was precarious and the meat of the case lay in the access problem; the position was now one that if they dropped the custody question, a favourable deal would be struck for the access. The barristers started negotiations centred around the amount of access and the amount of

maintenance being paid. The remainder of the morning was taken up with the shuttling to and fro of the barristers, presenting deals to the clients, who remained in two separate rooms with their solicitors. The father spoke at length of the emotional hurt of the situation: the lawyers spoke of technical negotiations.

The outcome of the negotiations was an agreed settlement of weekend staying access to the father with an additional week in the summer. The father agreed a new maintenance figure with the wife and an agreement was made regarding the arrears. The barristers then presented the agreement to the judge who approved it.

The judge felt obliged, as he indicated in a short discussion alone during the observation, to give a short homily to the parties about the need to come to their own agreement in the future, and their responsibilities to the child. It was the feeling of the judge that a morning spent with the barristers negotiating outside the courtroom was more useful than hearing the issues in full session.

The father felt that the agreement was the best he could have got. He felt very bitter about his wife, but also felt aggrieved that the solicitor's hopes for the case had not been fulfilled. The barrister felt that an effective salvage had been made and a good outcome had been achieved for the father. The solicitor felt strongly that the evidence for the custody dispute should have been heard by the judge, but, given the judge's view on the evidence, the outcome was adjudged a success; the father would probably have a greater amount of "quality time" with his daughter than he would have had should custody have been awarded to him, given that he was in full-time work.

The issue of the mother's boyfriend was not addressed. Having built the father up

with a chance to raise his fears, the issue was immediately discarded when the judge refused the evidence; yet the father believed he had a grievance around the behaviour of the boyfriend. The feeling that came from the father at the end of the morning was that the dispute was still present waiting to re-emerge at the next failure of one or other of the parties. To his mind, his daughter was in danger. Nothing had been resolved, the battle-lines had been redrawn slightly. A great deal of trust was placed in the court and the process of law to reason the solution for the parents. The negotiation was a bartering of sensibilities; each barrister giving a little ground and then describing it as a victory to the client so as not to damage the feelings and thereby destroy the work.

The two most striking features were the partisan nature of the fight - the parents never sitting face to face, and the importance of the go-between; and the absence of references to the child's welfare or needs. The second was the most disturbing. The child was the context of the fight, and yet the hidden dispute was the parents' communication breakdown; the welfare of the daughter was the superficial debate, but it was never asked what she might need. The needs were about the technicalities of access.

Observation 2.

The second case concerned access, but also concerned the equitable state of the matrimonial home. Three sets of participant were involved in the dispute: the mother, the father and his girlfriend, and the paternal grandparents. The matrimonial home was valued at £35,000. The property was mortgaged for £20,000, and the paternal grandparents loaned the son £12,000 to help with the purchase. The grandparents no longer spoke to their son and wished to realise their interest in the house, and secure a charge order on the house. The house was occupied at this time by the mother and the two children; the father and his girlfriend lived in London. The court had discretion to order a sale of the

property, the mother feared such an order as it would leave little capital after the interests had been realised, and she had no other home or chance of purchasing accommodation. It was the mother's belief that the father and the grandparents were co-operating in order to realise the money and allow the father to marry his girlfriend - "a put up job".

Thus the access and welfare issues for the child were set against a complicated property dispute and a fear of conspiracy on the part of one of the parents. The mother had stopped access, which had been on the basis of weekend staying access in Sheffield - the father and children staying with the girlfriend in her brother's house. The mother was also awkward about the children receiving telephone calls from the father.

The mother's reasons for the cessation of access were on three heads: she believed that the children were in moral danger by visiting the father when he lived with his girlfriend whilst remaining unmarried; she believed that the children did not want to see their father - the children would say "no" at the appropriate maternal prompt in the view of the solicitor; and she felt that the father did not have suitable accommodation in Sheffield for the staying access. There was no communication between the parties directly, only through their lawyers.

The relationship between the father and his girlfriend was of two and a half years' standing. Their intention was to marry on the granting to the father of the decree absolute. Despite the difficulties posed by the failure of communication with the grandparents, the father and the girlfriend had staying access at the girlfriend's brother's Sheffield accommodation. Prior to the cessation of access - the children had stayed with both the father and the girlfriend. The court welfare report stated that the children were well balanced and enjoyed the visits. The

reporting officer was prepared to confirm this to the court, although expressed apprehension at being called to give a judgement of the best arrangements.

Before entering the court, the barristers spent about an hour negotiating a settlement between the parties. The outcome was a series of dates on which access could take place for the father. These would be overnight access visits but the father's girlfriend could not stay in the same house overnight for the first two visits. The court was asked to make an order to that effect. The issue of the sale of the matrimonial home was left to a future occasion, but the couple's decree absolute was granted.

The father's reaction, especially after travelling from London for the hearing, was that there had to be a better way of resolving the situation and getting defined access than going to court. He was also distressed that the arrangements did not include his future wife, but was prepared to honour the court's order. The barrister's reaction was largely pragmatic - that was the way these things are done. It was apparent from this case that the court process involved a great deal of waiting in uncomfortable surroundings for the barristers to persuade their clients that the deal they were being presented was the best they could expect. Again the children's welfare and needs, for example with regard to their relationship with their father's future wife, and indeed an examination of the mother's feelings with regard to the situation and the impact of her feelings on the children were not addressed. The claims were taken as genuine and at their face value, and formed the basis of the negotiation.

At the court stage the power of the lawyers and the dependence of the clients on their advisers is very clear. The attitude of the professionals is crucial. A difference in the styles of the lawyers could be seen in the first and second case. Once the voluntary conciliation has failed and the court welfare team shift

from searching for a settlement to reporting for the court, the parents lose the chances to negotiate face to face; the movement is towards the evidential fight of the court process which must require the participants to focus on negative impressions of their life with their former spouse. There is a strong feeling in observing at the court and in talking to the professionals, that the couples have been required in the conciliation - the part of the decision making process over which they have some degree of direct control - to look for legal outcomes to the problem. The legal or pragmatic approach requires the dispute to focus on the day-to-day situations about which the parents cannot agree. There is an underlying agenda for each dispute which focuses on the emotional separation of the couple. This is assumed in the legal process of divorce, custody and access to have been settled between the parties in the decision to seek a separation. This assumes that the issues are simple and determined before seeking the legal avenues. It does not allow for the couples decision to seek legal advice to be one which is part of a complex search for the solution to an emotional problem. If couples had solved their emotional states before going to law they would surely be seeking the court's blessing on their separation, rather than seeking for the court to communicate, reason, and impose a settlement for them, absolving them of responsibility for failure. Couples go to law for many reasons, but the law's inability to allow them to address the root of their problem on the ground of a reluctance to enter into paternalism, is a false argument given that it is willing to enter the couple's private dispute to order practical steps.

There is a secondary problem which both the observations have thrown up at this point. Given that the courts own the order and the process of settlement, if it fails there is little commitment to the order by the couple, and the temptation is to return to the court for a further order. Thus the couple, by placing the responsibility for the decision making into the hands of the lawyers, are being dissuaded by the very process of the law to create channels of communication for

themselves. The emotional issues of the separation can be avoided with the result that the couple fight for a considerable number of years, or that the contact with one of the parents is completely lost. This clearly is not in the child's best interests as the couple's animosity or failure to communicate is not isolated from the child but is a major part of their environment, and clouds the models of behaviour that they see and learn from.

The two cases observed above are both returns to court for a modification to an original court order: the parties do not communicate with one another and the feeling of the lawyers is that it will not be long before the couple go back to court with a further problem. The courts seem reluctant, or unable, to break this cycle; the new law will also fail to address this use of the court as orders will clearly be necessary when the parents refuse to allow access to the children.

The Court Welfare officer felt that there was not enough time to fulfill all the jobs required of them. The job description of the court welfare service has changed away from investigation with the court making decisions, to the court welfare team deciding for the court in conciliating and negotiating the decision before the court. This shift is complicated by the different working styles of one region, sometimes failing to transplant successfully into a different court region with a different style of reporting and action in trans-regional cases.

Observation 3.

The third observation was of an access dispute. It had a further characteristic of the court stage dispute: one of the parties failed to attend. The solicitor expressed the view that the non-attendance was a common problem, especially in the magistrates' court - the county court seems to command more respect.

The feeling was the court was impotent. The father, who attended seeking access to his children - the mother had denied access for some four months, was belligerent towards the mother. The parents did not communicate with each other. Given that the mother had not attended the proceeding, there was very little that could be offered to the father to advance his cause, or to dampen his anger. The court ordered a welfare report and a further hearing in four months time. They also advised the couple to try conciliation. The court welfare office would give some form of *de facto* compulsory conciliation, but it is not forced to succeed; the father's reaction to a potential four month wait was predictable, he held little hope for the conciliation process. His reaction was stereotypical towards his ex-wife. The conflict felt intractable.

A very strong sense pervaded the case of the rules of the drama. The theatre of the dispute - absurd in the impossibility of finding a dispute - is dependent on certain rules being observed. The parties must have a certain degree of commitment to the process; they must attend the court, supply information, participate to a degree, perhaps even hold a degree of contempt for their situation: but there are also rules that can be completely disregarded, and the court's participation feels irrelevant, for the parties can walk away and disregard the order. Thus the feeling in the court is of absurdity - the process is a drama to settle the parents' disputes about the children, and yet the imposed settlement is not supported by the same careful precision of say the contempt of a civil court fine. The parents come for a settlement and the process takes them on a set course - if the parents cannot settle for themselves then the court process is essentially optional. The absurdity of the irrelevance of the process in creating a lasting settlement begs the question of who fails when the order is broken: the parents, the court, or the law?

The father left with the assurance that the court welfare team would report in

four months to a court if the process of reporting had not brought the parents together. The court seemed to forget the mother who had not felt the summons sufficient compulsion to attempt to settle the dispute.

Observation 4.

Again in the Magistrates' Court, the fourth case was a tactical appearance to gain a *D N A* test paid by the Legal Aid fund. The mother requested the test be ordered by the court, the father's lawyer agreed, the court ordered the test. The Legal Aid fund would pay for the test if ordered by the court, it would seem, but would not otherwise. Given that one of the parties attended, and both sides had solicitors in attendance, there was a feeling of the achievement of a perfect bureaucracy. The solicitor suggested this was not uncommon.

Observation 5.

The final observation was of a full custody and access hearing. This case showed clearly the fact that there is no "solution" for parents who both want the child to live with them; the result being a degree of chaos for the child. It also concentrated a number of fundamental difficulties in the process.

The mother and father divorced in 1986 after some 13 years of marriage. At that time there was a daughter (13) and a boy (5). On the divorce the children both went to the father, the mother having left them in his control for "another man". The father continued to live in Sheffield, the mother moving to Newcastle.

After a short period of time the daughter became unhappy living with the father and went to live with her mother by agreement between the parties. She then became difficult, and the mother and daughter sought the help of a social worker to resolve the behavioural problems. This seems to have been successful, the

daughter now has a job and the tensions seem to have been resolved.

The son has a happy life with his father, having common interests in football, fishing and a model railway. They spend a great deal of time together. The son is actively involved in his school life being good academically, and also involved in football and swimming teams. He has two special friends, and seems to have strong roots in Sheffield.

Both mother and father now live with other partners, and their families include other children. The mother and her second husband have a son (3½ months old at the time of the hearing). The daughter and the son both get on very well with the baby - the brother and sister also get on well together. The son seems to get on well with the stepfather.

The father cohabits with his partner, who has two daughters by a previous relationship. The girls were 15 and 13 at the time of the hearing. The son gets on well with the father's new partner and her 13 year old daughter. He does not get on so well with the 15 year old.

The maternal aunt has recently moved to Newcastle and the son is very close to her. She acts as a go-between in the access arrangements at the present. The aunt has two sons who are slightly older than the boy in question. He gets on very well with them. The son had been in the same class at school as one of his cousins before they moved to Newcastle.

Recently the son had expressed the opinion that he should live with his mother in Newcastle, rather than his father. The mother's claim was that he persistently asks this of his mother when in Newcastle. The father claimed that he did not mention it to him. The parents had not communicated with each other since their

divorce, and used either the aunt or their solicitors. The mother sought the court's order that the son should live with her and that custody should be given to her. The father objected.

After a brief period of negotiation, it became clear to the barristers that no agreement would be reached, and the hearing went ahead. A day had been set aside for the hearing; the expectation was for a hard fight. The court welfare officer was called and expressed the opinion that he was happy with the present circumstances. The boy seemed to be achieving a great deal in Sheffield. The boy expresses the desire to move to be with his mother. This has been expressed directly to the court welfare officer. The officer's opinion is that it may be genuine but that it does not contain the same degree of desperation that is usually found with this attitude. The officer would not be drawn as to the best place for the child, and could not see if the child was genuine in his desire to move, or whether it was related to other issues for the child. He noted that the boy 'phoned of his own initiative and there did not seem to be any direct pressure on the child to express the views.

The court spent some time in attempting to determine if the child should attend the court or not. The judge did not fully answer this request, but was of the opinion that the court would probably be unable to gain more than the court welfare officer, and it would be better if the child did not attend. It was the child's express wish that he should come to the court to speak to the judge and express his desire to the court.

This showed a clear indication of the purpose of the court. The rationale in the decision not to hear the child was that it would not be useful to the court; the court would gain nothing further by hearing the boy. Thus the court is firmly in the decision making rôle in this decision, when it is desirable for the court to

hear the child because the court will gain a greater understanding of the case, the debate shifts to "is the child going to be harmed by the experience of the court attendance?" The feeling is that generally it would not be harmful - a view especially held by magistrates who do not seem to hold with the idea that the court can be traumatic for the child. The criteria is one of benefit to the court unless there will be harm to the child.

In the case before the court here the issue was of the positive benefit to the child in coming to the judge. The child identified the judge as the individual deciding his future and in whom he felt able to confide. By rejecting the child's wish to be involved, the court may well have caused problems for the child in coming to terms with the situation it then went on to impose: "why should I be excluded?" This is in clear contrast with the indulgence shown to parents who come to court time and again. Surely the courts should be adopting the same standard of rights to all those involved in the process of family collapse; if a child feels old enough to contribute then perhaps it has as much right to participate as its parents. Is not this the line taken in *Gillick* over the independence and participation of the child?

It is only after the reason for including the child in the court process has been clarified and justified, that the issue of how to guard against trauma in the way to speak to the child becomes important. Once it has been determined that the evidential thirst of the court is secondary to the positive benefit of including a particular child in the ownership of the family's court appearance, the modifications to the facilities of the court in dealing with youngsters can be understood and addressed. This then informs the question as to the way the children should be spoken to by the judge and this should be part of the training of the court as well as the court welfare service, but it also begs the question of how the adults should be treated in the court process and how to speak with

them. It is probably not enough to say the child's views are expressed to the court by the court welfare officer if the adults are the focus of the officers' conciliatory approach and the shift in the court room is to a negotiated settlement. There remains a great deal of thinking to be done about the changing rôle of the court and the judge in separation; the danger is that the process will not think from first principles of what is needed, but reform on the basis of what has always been done. It is not only the court welfare office who are in the process of shifting from investigative work and moving towards a therapeutic model, it can be argued that the courtroom negotiation and "*plea bargaining*" approach is making the same shift in the rôle of the court.

In the court the parents both presented themselves as centrally concerned with the welfare of the children. The mother's argument was simply that the boy persistently requested that he should live with his mother, and that he should be allowed so to do. Had the boy's desire been to remain with his father, then the mother would have agreed to it. The appearance was of a concerned parent who was honest with the court, and had no self interest in her son's move to live with her. She assured the court that her son would be returned to his father's custody if he did not settle, although no indications were given or pursued as to the definition of a failure to settle or the time scale involved. She was perfectly happy with the care and upbringing that the child was receiving with his father.

The father's argument was based on two points: he was concerned that access would be prohibited by the cost of travelling to Newcastle and therefore the closeness of his relationship with his son would be lost; and he was also concerned that the same behavioural problems that his daughter had experienced on moving to live with her mother would befall his son. Both parents expressed the split life that the child had, having two clear homes. They came across as very honest, willing to explore all the possibilities for their son. They had not

been able to do this between themselves as they had not found a way of communicating with each other.

The aunt was then called for the mother's case. She seemed to fight a great deal harder for the child's move to Newcastle. Her own sons were friends of the boy, and if the boy moved to his mother he would be in the same class as the cousin, in what the mother and aunt insisted was a very good school, although both admitted that the child was happy and settled in his present school. She stressed repeatedly that the boy was very mature for his years, more so than her own sons who were older. She felt he would be able to adjust to the move. The aunt was a "good" witness in terms of communicating to the court. She stressed the positive benefits to the boy of being with his mother, and repeated the view that if that was the child's desire then, that should be the case.

The judge in summing up found that there was a strong link with the father and a good home life in Sheffield. He was impressed by the parents. He had misgivings about the proposed move to Newcastle, not least because of the potential break in contact with the father, and the upset it would cause to a pattern that seemed to be working well; the mother had a great deal of access, the child staying with her during the holidays. The judge however felt that the child's age - 9 years - was sufficient to allow an informed decision on the part of the child, and he rejected that nine was too young, especially given the aunt's evidence that the boy was mature for his years. The judge felt that it was better to move the child now at the stage in his education when public exam's were not looming, rather than leave him with his father and have him "vote with his feet" at a future, more disturbing time. Consequently the mother was given custody, and care and control of the boy; the father access.

The barrister for the father was excellent, having a clear ability in

cross-examination. The mother's barrister was a great deal more clumsy in his questioning - giving the impression of stumbling through the case. The judge at a number of points had to call him off a line of questioning to the father because the question was incomprehensible. The barrister latter felt that the judge had already decided in his favour and the question was challenged to stop salt being rubbed into the father's wounds. It felt on occasion that the barrister had run out of questions and was repeating ideas and covering the same ground whilst waiting for inspiration. After the case the mother's lawyers felt that the case had been largely inevitable and the boy would have gone to live with his mother regardless of the court's order. The father was left confused as to how he could maintain contact with his son.

The case was interesting from the point of view of the child's best interests. The boy had expressed a strong wish when with his mother that he wished to live with her. He did not mention it to his father. The court welfare officer believed that there was no reason to move the child but for the expressed wish, and that the decision was for the court. The boy was not given the chance to express his opinion to the court as he also expressed the wish to do.

It felt that the best interests of the child were very much a face value interpretation; that the sentiments expressed were genuine and of only their immediate meaning. The fact that the boy repeatedly asked to live with his mother when with her was taken as that simple request and no other meaning was explored. The child may have felt that the mother expected that reaction, perhaps having expressed the wish to the child, and that to show the appropriate love to the mother he would have to make the appropriate requests. Perhaps in the atmosphere of living for short periods with his mother, the feeling of imminent separation expressed by the adults made the request an escape from the tension in the household. Perhaps there was a constant referral to him living with his

mother, or not living with his father, and the child felt the need to fit in with the dialogue around him. There was also an assumption that the child understood the implications of leaving the security of calling his father's household home and severing himself from his school, hobbies, and friends. These were not explored by the welfare officer or the court, and yet would seem crucial to the interests of the boy, or an understanding of why he made the request. The feeling remains one of an endless series of questions which the child unlocked about his experience of family life which were ignored in the pursuit of a settlement.

Two patterns of court hearing emerge. The first is the plain manipulation by the parents for their own fight dressed in the disguise of the best interests of the child. The second is the genuine desire to come to an agreement, or to have the child with the particular parent. This is not borne out of the hatred in the first case but out of love for the child and the genuine pain of having to split a family into two separate units when the parents can no longer live together. Both the approaches are compounded by the parents inability to communicate directly, and the anger and frustration often left after their separation and divorce. It is also heightened and to a certain extent encouraged by the court's approach to the best interests of the child. The courts respond to the two approaches of the parents - *manipulative non-communication* or *desperate non-communication* - by a *pragmatic-literalist* approach to the case. The *literalist* approach simply accepts the claims on their face value and blocks out any deeper emotional understanding or interpretation of what is said, claimed, or requested in the courtroom: *pragmatic* in that it is settlement obsessed. Sometimes the approach is challenged by the depth of the court welfare report, but even that can be short-circuited by a reluctance to develop certain more emotionally challenging lines of inquiry. An alternative model would be a *therapeutic-process* approach, which would develop a system inquiring beyond the initial questions of the dispute and uncovering the true issues which may well concern the parents feelings for one another and issues

concerned with the breakup of the relationship: identifying the *process* as taking a considerable length of time. This would allow for a more complete appraisal of the child's best interests as it would place them in a context which requires the parents to work at their own interests and identify the child's needs having separated them from their own needs and feelings.

Appendix A-4: Table of responses, question 4.14 and 4.15.

The statements from the caselaw - question 4.14.

The full wording of the question can be seen in appendix A-1.

The professionals were asked to rate the statements (a-z) using a scale of 1 - 5 where 1 = strongly agree, 3 = neutral, and 5 = strongly disagree.

Qu. Area:	Court welfare.		Conciliators.		Solicitors.	
	1 1234	2 1234567	1 123	2 1234567	1 123456	2 12345
a	2212	4221221	22-	2312121	212422	33322
b	1512	1313321	215	421-511	131223	21331
c	5133	1341225	223	4254521	353453	22114
d	1452	1423143	32-	425--42	555344	45332
e	5553	3435552	455	4334-24	253223	34353
f	-223	2323222	344	2122-23	132211	25322
g	4533	3432231	335	4222541	333231	13213
h	5345	3224542	454	4544-21	144324	3433-
i	1122	4445143	4--	3142155	233243	2434-
j	4123	232313-	32-	4333213	333233	32333
k	1434	4322122	341	222213-	434442	22223
l	5545	5355434	355	4434545	453-32	31434
m	5443	3435533	34-	5424-45	355-32	45525
n	5543	5244544	455	5442155	522253	35554
o	5454	4353544	445	545455-	445454	54-54
p	1123	52354-2	345	4534543	152-15	24524
q	5555	5555434	345	3553535	242422	24334
r	1114	1223121	111	2112111	111211	11112
s	1112	1211112	111	2112-11	211232	11131
t	1311	222-144	242	3112125	323321	1512-
u	1111	1211111	211	1111111	111111	11111
v	5345	4315521	213	2144-13	431254	32132
w	5554	4445534	445	5354343	342245	54334
x	2111	2232432	415	2434543	141221	25232
y	1112	2231221	221	2311121	111112	22122
z	5333	223--4-	341	453-14-	335434	3553-

Elements of the child's best interests.

The professionals were given the following list of elements which could figure within the child's best interests, and were asked to rate them where 1 = very important, 3 = neutral, 5 = irrelevant, to the child's best interests. The top axis shows the rating: the figures in each column in the body of the table indicate the frequency of response.

AREA ONE.

	Rating.														
	1			2			3			4			5		
	S	Cw	C	S	Cw	C	S	Cw	C	S	Cw	C	S	Cw	S
Discipline		1	1	5	2	2		1							
Balanced diet	1	2	1	2	1	2	1	1		1					
Play - alone	1	1	1	2	1	1	2	1	1		1				
Praise	3	4	3	1			1								
Confidence	4	4	3	1											
Relating to others	5	4	2			1									
Play - with adult	1	4	2	2			2		1						
Love	5	4	3												
Affection	4	4	3	1											
Intel. Stimulation	4	2	3	1	2										
Good schooling	2	2	1	2	2	2	1								
Economic stability	1	1	1	2	1	1	1	2	1	1					
Self worth	4	4	3	1											
Ability to share	3	3	1		1	2	2								
Material comforts				3	1	1	1	3	1	1		1			
Ordered lifestyle	1	1	1	2	1		1	2	2	1					
Peace and quiet			1	1	1		2	3	1	1		1	1		
Mother-child bonding	3	4	3	1			1								
Father-child bonding	4	4	3	1											
Continuity of attachments	5	4	3												

AREA TWO.

Rating.

	1			2			3			4			5		
	S	Cw	C	S	Cw	C	S	Cw	C	S	Cw	C	S	Cw	S
Discipline	1	2	2	3	5	2	1		1						
Balanced diet	1	1	2	2	4	2		2		1		1	1		
Play - alone	1	1	1	2	1	3	1	3	1						
Praise	3	5	4	1	2	1									
Confidence	2	5	4	2	2	1									
Relating to others	3	4	5	2	2			1							
Play - with adult	2	2	1	2	2	4		2							
Love	5	6	5		1										
Affection	5	4	4		3	1									
Intel. Stimulation	3	1	3	2	5	2		1							
Good schooling	2	1	1	1	4	3	1	1	1	1					
Economic stability	1	1	1	2	3	3	2	3	1						
Self worth	3	7	5	2											
Ability to share	2	2	3	2	1	1		3	1	1					
Material comforts		1		1	2	2	1	4	1	3		2			
Ordered lifestyle	2	1		1	4	2		3	1	1		2			
Peace and quiet				2	1	1	2	3	2		2		1		2
Mother-child bonding	3	5	5	2	1	1		1							
Father-child bonding	3	5	5	2	1	1		1							
Continuity of attachments	4	6	5	1	1	1									

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