ARRANGEMENTS FOR CHILDREN ON MARRIAGE BREAKDOWN

WITH SPECIAL REFERENCE TO ACCESS

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ABSTRACT

The objectives of this study were to consider the causes of disputes, particularly access disputes, between parties after separation, and the adequacy of children orders in resolving these disputes. The methodology included recorded interviews with separated parents, court personnel and welfare officers; an examination of the records of a magistrates' court for one year and comparison with the results of a national study of divorce courts; and a review of the literature on legal and welfare practices, and the effects of divorce on children. A number of hypotheses were tested in the study: these concerned the causes of access disputes; the relevance of children orders in undisputed custody and access cases; the courts' practice concerning granting custody to fathers; the ability of the court to enforce its access orders against the wishes of the custodian parent; and the usefulness of matrimonial supervision orders in alleviating stresses between parties and facilitating access.

The actual achievements of the study include the description of the marriage breakdown of a small number of parties and the grievances that remained after the separations; an examination of the behaviour of the parties after the separation and the possible effects of this behaviour on the children; the court remedies provided for these particular parties, and an approximate estimate of the work of the courts in the city of the study, including welfare work under matrimonial supervision orders; the method of communication between the courts and the welfare services; and an examination of the assumptions and practices of court and welfare personnel on custody, access, welfare reports and matrimonial supervision orders.

An assessment is made of the extent to which the courts and welfare services satisfied the needs of parents and children, and recommendations are made on how legal and welfare services could be modified, and on the need for additional extra-legal services.

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CHAPTER 1 : INTRODUCTION

A. OBJECTIVES

Legal separations and divorces take place when the relationship between parties has broken down, and the courts make orders to end them. A complete break may not be possible when there are children, as parent-child relationships may remain intact. The child can no longer live with both parents, and the courts usually make an order giving custody or care and control to the party who is to care for the child. The connection between the parties usually continues in the form of either access or maintenance or both, and occasionally in discussions and joint decision-making regarding the child's future upbringing.

Access requires the co-operation of the parties, and provides an arena for possible disagreements and disputes between the parties after the separation. Any access problems may affect the relationship of the child with one or both parents. Maintenance disputes may also affect the parent-child relationships, particularly when they are connected to access disputes. Joint discussions and decision-making over the child's future appears to take place only when the parties are able to co-operate without animosity, and may be unlikely to give rise to disputes.

A separated party may feel aggrieved by the custody, access or maintenance orders, or by the distribution of the matrimonial assets, and may be reluctant to comply with these orders. Such reluctance with regard to access and maintenance orders may give rise to further disputes on these issues. Grievances may also be felt by one party at the end of a marriage

because of the behaviour of the ex-spouse during the marriage, or because of the reluctance of one party to end the marriage, and may lead that party to attempt to irritate, punish or hurt his or her former spouse by disputing access or maintenance or both. If the underlying causes of disputes do not receive attention, or if either party feels that an injustice has been done by the court, then further disputes may add to the difficulties of children following their parents' separation. With divorce figures and the number of children affected continuing to rise - there were 131,404 divorce decrees made absolute, involving 163,221 children under the age of 16 in 1980 (1982 Office of Population Censuses and Surveys, FM2 82/1) - it is important to attempt to reduce the number of children at risk from this source.

This study was designed to consider the causes of disputes between parties after the separation, and the adequacy of children orders in resolving these disputes, and protecting the interests of the child. The causes of grievances of a number of separated parties and their reaction to the legal processes were investigated. The legal and welfare remedies employed to resolve these disputes were discussed with the parties to discover whether they felt they had been treated fairly by the courts, and to investigate whether the courts were able to remove the causes of their grievances.

In order to place the legal and welfare remedies available to the separated parents interviewed within the wider context of the orders made by courts in the city of the study, it was planned to examine the records of these courts in one year. In doing so, it was hoped to show whether similar types of custody and access orders were made by the domestic and divorce county courts, and whether both courts referred a similar proportion of cases to the welfare services. Any discrepancies between the remedies available to the parties in either court in the area would therefore be demonstrated. Also this information would add to the scarce

accounts of the work performed by the matrimonial courts in the country.

When dealing with separated parties with children, the courts are required by law to regard the welfare of the child as the first and paramount consideration. They may order the assistance of the welfare services (Probation officers and Local Authority Social Workers) either in the preparation of welfare reports, or subsequently in the supervision of a child. There are no agreed guidelines between the courts and the welfare services on child-care requirements, and opinions may differ on the desirability of various objectives, e.g. the encouragement of the continued involvement of the non-custodian parent. The expectations by the courts of the actions likely to result from welfare officer intervention may not coincide with what takes place in practice. The study therefore included an investigation of the views, assumptions, and practices of these personnel. The method of communication between the courts and the welfare services was also examined to see whether it worked smoothly.

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B. METHODOLOGY

The study was conducted in a large city in the North of England, although a few of the interviewees worked in neighbouring towns and cities.

1. Interviews

The interviews lasted between one and one and a half hours, and were tape-recorded and later transcribed. A series of question lists had been prepared in advance for the various groups interviewed, and provided a check list to ensure comparability. Many open-ended questions were used in the interviews with parents, who were encouraged to talk freely about their post-separation experiences and responses. The limited resources available made a large-scale study out of the question, and the interviews

were few in number, and non-representative.

Although a representative, national sample of separated parents and court personnel would have been preferable, it was considered that the qualitative data resulting from the interviews provided useful information about certain problematic questions locally, and might give some indication of the probable national picture. The grievances of separated parents which came to light in the interviews are likely to occur throughout the country, and the interviews were designed to illuminate the circumstances in which further disputes between parties are likely to occur, with possible adverse effects on parent-child relationships. The interviews with court and welfare personnel were designed to demonstrate any lack of consensus within each profession, and whether the expectations of the courts coincided with those of the welfare officers. Any differences of viewpoint within and between the two groups in the city are also likely to be present in other parts of the country.

(i) Parents

The parents who were interviewed responded to an article on the research study which was featured in local newspapers, or volunteered when they heard of the study from other sources. In a few cases, a former partner of the volunteer was approached, and this led to 2 further interviews. No approach was made to the former partners in the majority of cases, either because this party had moved too far away, or because it was feared that such an approach might jeopardise the existing arrangements, especially those for the children.

Interviews took place with 28 parents, including one man who had been divorced twice and two couples. The data therefore covered 27 relationships which ended in separations and in most cases divorce.

Of the 12 women interviewed, 9 had sole custody of the children, 1 was a non-custodian parent, and 2 had at least 1 child living with them. There were interviews with 16 men, 5 of whom had custody of the children, while the remaining 11 were non-custodian fathers. The parents were questioned about their early lives: the marriage, separation and divorce where appropriate; the arrangements for the children; the financial arrangements; their present lives; any disputes which occurred; and any behavioural problems of the children.

(ii) Magistrates and Court Clerks

It was considered necessary to interview both magistrates and court clerks since there is a separation in the magistrates' court between the adjudicators - the magistrates, and the experts on law - the court clerks.

The Deputy Chief Clerk in the city of the study selected 6 magistrates for interview. All were chairmen from the Domestic Panel[1] with a considerable amount of experience. There were 4 women and 2 men. Although there were more male magistrates in the city, there were more experienced female magistrates because of the requirement that there should be at least one women on the bench when domestic cases are heard. Female magistrates are called on to serve on domestic cases more often than male magistrates.

Six court clerks were interviewed, all men. They were chosen from lists of clerks who had officiated in the domestic courts during the six weeks prior to the interviewing period, and their length of service varied

1. Domestic Panels were set up in magistrates' courts as a prelude to the introduction of the Domestic Proceedings and Magistrates' Courts Act 1978 (DP&MCA). The members of these panels had previous experience of domestic work.

considerably. A further 6 clerks were interviewed in a neighbouring city, 2 women and 4 men. They were chosen by the Deputy Chief Clerk, and all had worked in the domestic court for at least six years.

The magistrates were questioned on the following: their experiences of making various orders; their reasons for requesting welfare reports; what they considered to be relevant considerations in custody cases; their attitudes to access and the reasons justifying its refusal; and their purposes in making matrimonial supervision orders.

The court clerks were questioned on the following: the similarities and differences between the procedures for making matrimonial and guardianship orders; their reasons for thinking that welfare reports were necessary; the maternal presumption, and what they considered were relevant considerations in custody decisions; the usual practices when access orders were made or varied; their attitude to access, and the reasons why it was refused in their experience; the purposes of matrimonial supervision orders, and whether this course of action was usually recommended by a probation officer; and their experience of psychiatric evidence in the court.

(iii) Judges

There were only 2 resident County Court judges in the city of the study, and they were approached for interviews via the Chief Clerk to the County Court. One judge in a neighbouring city also agreed to be interviewed.

The judges were asked similar questions to those put to magistrates and court clerks, with the addition of their views on the work of the Probation Service in the preparation of welfare reports and supervision of children under matrimonial supervision orders, and their normal practices

in conducting Children Appointments.

(iv) Probation Officers and Social Workers

Considerable difficulties were encountered in approaching the Probation Service for their co-operation with this research study. Initially the Divorce Court Welfare Officer in the city was contacted, who said that Home Office permission was necessary before probation officers could discuss their work with those outside the service. The Home Office, however, suggested that the Chief Probation Officer in the area should be contacted directly for approval, and an extensive interview resulted with the Senior Officer for Research. This officer arranged a meeting with the Chief Probation Officer in the city, and a further interview took place with this officer, who then arranged a meeting with all the Senior Probation Officers in the city. Finally 3 officers agreed to be interviewed together and further interviews were arranged later with one of these officers, and with one other officer. In addition, 2 probation officers agreed to discuss their matrimonial supervision orders in detail. Thus there were interviews with 7 probation officers in the city. However probation officers outside the city were less reluctant to be interviewed. This resulted in 3 more Divorce Court Welfare Officers agreeing to answer questions.

The Director of Social Services was approached for the co-operation of social workers, and an appointment was arranged with an officer from the Development Group. The names of social workers in the city who had a number of matrimonial supervision orders on their books were obtained from a computer, and these officers were requested to answer a set of questions that had been approved by the Development Officer. In addition, a Chief Social Worker in one office offered to discuss his experiences in relation to matrimonial supervision orders.

Interviews took place therefore with 10 probation officers and 14 social workers. Fifteen of these officers discussed specific matrimonial supervision orders on 37 families involving 104 children.

The officers were questioned on general matters including their normal practices in relation to the preparation of welfare reports; what they considered to be relevant considerations in custody decisions; their attitude to access; and their experiences of matrimonial supervision orders. The leader of the probation team in the magistrates' court, and the Divorce Court Welfare Officers were also questioned about their roles in the courts, and the methods of communication between the court and the welfare services. One Senior Probation Officer was in charge of training, and discussed training methods in the Probation Service.

The study of the handling of specific matrimonial supervision orders demonstrated the supervising officers' views on what was appropriate for the particular children. Taken in conjunction with the recorded attitudes and experiences of the personnel involved in the courts and welfare services, it was possible to show the degree of common agreement on the action that should be taken to further the interests of children of separated parents.

2. Records

It was hoped to examine the work of the magistrate and divorce courts in the city during one year, in order to estimate the frequency of different types of children orders, and the amount of welfare services involvement. Also a comparison would be made between the courts to see if there were any significant differences in their practices. These findings would be compared with the only national study available on the

work of the divorce courts in England and Wales (the Oxford study - Eekelaar et al, 1977) to demonstrate local variations. No comparable study has been undertaken on the work of domestic courts, as McGregor et al, 1970, did not include this information in their study of the matrimonial jurisdiction of magistrates' courts.

The Chief Clerk to the Justices in the city was approached by letter for permission to examine the domestic records for the year 1976, and after a lengthy discussion on the project kindly agreed to allow access to any relevant materials available.

The day-to-day Annual Register was used to ascertain the numbers and types of cases heard. Sometimes the record stated the number of children involved, and their ages and genders, and in some other cases, it was possible to obtain this information from the Maintenance Record Cards, or from the copies of orders retained in the office. In cases where orders were varied, copies of the variation orders were examined to find the date and details of the original orders. No details of evidence were available in the Register, and the Notes of Evidence, taken by the court clerk at the hearing, were frequently in short-hand and impossible to decipher. Therefore the reasons for decisions were not available, nor was it possible to be sure whether custody was contested or not. A small number of welfare reports were attached to the Notes of Evidence, and these were the only reports read. It was possible to state whether a welfare report had been prepared in certain cases, as this information was supplied by the Probation Service, who keep records of reports prepared by both probation officers and social workers. As magistrates appear to order welfare reports in all contested custody cases, it was possible to limit the number of cases in which custody might have been contested. If an order was made defining access, it was assumed that there had been a dis-

pute of some sort on this matter. It was possible to discover whether a matrimonial supervision order was made, transferred or deleted, but not the purposes of these orders. The information on the work of the domestic court had to be pieced together from this variety of sources, and there were gaps in the data obtained in a number of cases.

The attempt to examine the records of the divorce court in the city met with no success. The North East Circuit Administrator was approached by letter, and after a prolonged interview agreed to forward the request to the Lord Chancellor's department. A High Court Judge also discussed the proposed research, and agreed to approach the President of the Family Division with the request for permission to sit-in on Children Appointments. These requests were refused. It was not possible, therefore, to calculate the work of the magistrates and divorce courts in the city, including the use made of welfare services, nor to compare the findings from the 2 courts. The search of the records therefore yielded only incomplete information on the work of the magistrates' court which handles relatively few cases compared to the divorce court, and these findings were compared with the Oxford study (Eekelaar et al, 1977).

In addition, the records of the Probation Service Area within which the study took place, were examined, and yielded information on the numbers of matrimonial supervision orders made annually in all the courts in the area, and the percentage of these orders which were retained until the child reached the age when the order expired. These figures were compared with the national figures published annually by the Home Office. As matrimonial supervision orders are the only way in which the court remains indirectly involved with children after the hearings, it was considered important to know how often these orders were made, and for how long they tended to remain in force.

3. Analysis

The analysis of the interviews with judges, magistrates, court clerks, and welfare officers involved the assembly of their views and practices regarding custody, access, welfare reports and matrimonial supervision orders. The analysis of the interviews with parents was more difficult, as a basis for comparison of the material had to be found. One major division noted is between those cases in which both parties wanted the separation to take place, and those cases in which only one party was willing to end the relationship. Accordingly the material has been divided and examined within these two groupings.

The factual information on the two groups was extracted from the transcripts of the interviews under 3 headings: the marriage patterns, the separation and divorces, and the post-separation arrangements. The views of the parties were compiled on the legal system, the separation and its aftermath, and also on the effects of the separation on themselves and their children.

The behaviour of the parties after the separation was found to fit into a number of categories, and brief accounts are given of the experiences and problems of the parties, and the actions taken by the courts where appropriate. Finally an evaluation is made of the functions of the court and the welfare services, and the ways in which they served or failed to serve the needs of the parties and the children.

The analysis of the records of the work of the magistrates' court covered children orders made and varied by the courts, and contained information on custody, access, and matrimonial supervision orders, and whether welfare reports had been prepared in particular cases. A sample was examined which contained all the cases in which men were given custody

of at least one child at the initial hearing and a representative sample of the same number of cases in which women were given sole custody of the children. Information is provided on which party was the complainant and which proceedings were used; the outcomes of the cases; how often welfare reports were ordered and matrimonial supervision orders made; and the numbers of children involved. The purpose was to show whether the actions of the court differed when men or women were given custody of the children.

C. THE ACTUAL ACHIEVEMENTS OF THE STUDY

The study describes the marriage breakdowns of a small number of parties, and the grievances that remained after the separations. An examination was made of the behaviour of the parties after the separation and the possible effects of this behaviour on the children, and how disputes were dealt with by the courts, including the involvement of the welfare services. The parties were questioned about their experiences of the court's investigative function, and their feelings on the justice of its adjudication. Magistrates' court records were examined to provide information on the types of orders made, and the use that was made of the welfare services. As similar information was unobtainable from the divorce court, an approximate estimate of the work of the courts was provided using the findings of the Oxford study (Eekelaar et al, 1977), although considerable local variations had been demonstrated between divorce courts in England and Wales. Information was obtained on the work of the welfare services from Probation Service records, and from details of how over 100 matrimonial supervision orders were handled by supervising officers. The method of communication between the courts and the welfare services in the city was explained. The views, assumptions, and practices on custody, access, welfare reports and matrimonial supervision orders were described by judges, magistrates,

court clerks, and welfare officers, and any differences within and between these professionals was noted, including differences in expectations by the courts of the practices of welfare officers.

A combination of the above data enabled an assessment to be made of the extent to which the courts and welfare services satisfied the needs of parents and their children. Recommendations are made on how certain existing court and welfare services could be modified and expanded, and on the importance of additional extra-legal services to help separating parents and their children.

CHAPTER 2 : THE LEGAL FRAMEWORK

The legal framework within which arrangements for the children are made when separations and divorces take place will be described in this chapter. The framework includes statutes and rules, case law and practice directions. At the time of this study, the Matrimonial Proceedings (Magistrates' Courts) Act 1960 (MP(MC)A) was in force. This has now been superseded by the Domestic Proceedings and Magistrates' Courts Act 1978 (DP&MCA). Reference will be made to the law under both statutes.

A. CHILDREN'S ARRANGEMENTS IN THE DIVORCE COURT

1. Filing the Divorce Petition

On application to a county court, the petitioner is supplied with forms and instructions including a form for a statement as to the arrangements for the children when appropriate. Whether or not the petitioner is seeking custody of the child/ren, a written statement signed by him or her personally as to the proposed arrangements for minor children must be supplied. A court fee of £35 must be paid by the petitioner. Since legal aid for undefended divorces was withdrawn in 1977, many parties act without a solicitor, although they may consult one in the preparation of their petition under the "Green Form" scheme. When the petitioner files the petition in the court, a copy is sent to the respondent, who must acknowledge service before the case can proceed. If the respondent decides to defend the case, the court automatically transfers the proceedings to the High Court (Matrimonial Causes Rules 1977 r 6(1) (MCR 1977)). If there is no intention to defend the case, the court office sends copies of the acknowledgement to the petitioner to confirm

that the signature is that of the respondent (MCR 1977 r 14(8)). Other documents sent to the petitioner include a form for request for Directions for Trial (Special Procedure) and forms of Affidavits of Evidence (Special Procedure). The latter document is used to confirm the contents of the petition, and to provide evidence to prove the allegations. The affidavit must be sworn either before a solicitor, or at the court office. A respondent seeking custody may file a written statement of his views on the present and proposed arrangements for the child's care and upbringing (MCR 1977 r 50). Once these documents have been returned to the court, the second stage can begin.

2. The Registrar

The case is entered in the Special Procedure list once all the necessary forms have been filed in the court (MCR 1977 r 48(1)). The registrar examines the papers and fixes a date for the pronouncement of the decree nisi by the judge in open court (MCR 1977 r 48(2)). The registrar also fixes a Children Appointment in cases where there are minor children, that is children under the age of 16 or children undergoing further education or training, and any other child of the family to whom the court directs that this section shall apply (S 41(5) Matrimonial Causes Act 1973 (MCA)).

3. The Divorce and the Children Appointment

The Children Appointment usually takes place on the same day as the divorce decree nisi unless there are reasons why the hearing cannot take place on that date, e.g. welfare reports ordered by the Registrar have not been completed, or custody of the children is contested so that a full custody hearing is necessary. The purpose of the Children Appointment is to ensure, as far as possible, that a decree will not be granted over-

looking the children who would be affected by it. The divorce cannot be made absolute until the Certificate of Satisfaction regarding the children has been signed by the judge (MCR 1977 r 65(2)(e)). The judge must be satisfied that the proposals regarding the children are satisfactory, or the best that can be made in the circumstances. In exceptional circumstances, the judge may rule that it is impracticable for the party appearing before the court to make any such arrangements (S 41(1)(b) MCA 1973), or that there are circumstances making it desirable that the decree should be made absolute even though the court is unable to make a declaration of satisfaction (S 41(1)(c) MCA 1973).

Custody and related matters are normally heard in private, but the judge may adjourn into open court, whether hearing the application initially or after reference to him by the registrar. The decisions of appeals and the reasons for them are made in open court, but the hearing may be in private.

The petitioner may apply to the court for the decree to be made absolute 6 weeks after the pronouncement of the decree nisi. If the petitioner fails to apply, the respondent is entitled to do so after a further 3 months (MCR 1977 r 65 & 66).

4. Processing the Orders

The orders made in the county court are processed and retained in the court, and copies are sent to each of the parties. If a matrimonial supervision order is made, an additional copy of the order should be prepared and sent to the Divorce Court Welfare Officer.

5. Variations

The application may be made by the petitioner to the court for a variation order, for which there are no court fees. After the respondent has been served with the petition, a short hearing will be arranged, usually within a month, when the judge or registrar gives directions for the hearing and welfare reports may be ordered. A hearing date will then be arranged. Delays can occur in these cases coming to court if there are difficulties in serving the petition on the respondent, or if either party fails to appear at the hearing.

6. The Roles of the Registrar and the Judge in Children's Arrangements

Financial matters are usually determined by the registrar in chambers. When there is consent about the custody or education of a child, or when the only question at issue is the extent of access to a child, the registrar may make such orders as he thinks fit or he may refer the application on any question arising on it to the judge for a decision (MCR 1977 r 92 ; Practice Direction (1977)3 All ER 944). If consent is sought from the registrar before the judge has expressed his satisfaction over the arrangements, an interim provision may be made by the registrar pending the judge's satisfaction.

Children Appointments take place before the judge in chambers and he is responsible for signing the declaration of satisfaction regarding the arrangements for the children. The welfare of a child includes education, financial provision, and custody (which itself includes access) (S 41(6) MCA 1973). Cases involving a contest over custody or the principle of access are heard before the judge, and any other cases containing other matters referred to him by the registrar. Either the judge or registrar may order a welfare report at any time in matrimonial proceedings (MCR 1977 r 95(1)).

Subsequent applications regarding disputes concerning children may be heard by the same judge if practicable, unless he considers this to be unnecessary. Where the judge has specifically reserved future applications, a hearing before him should be arranged if possible ((1972)3 All ER 255; (1972)1 WLR 1195).

B. MATRIMONIAL PROCEEDINGS IN THE MAGISTRATES' COURT

1. Filing the Application

The Magistrates' Advice room is open to the public each morning before the courts sit, and a Court Clerk is available to offer advice and assistance. The Clerk may direct the complainant to the Probation Service office, or he may advise consultation with a solicitor. A duty solicitor may be available in the court building. Legal aid will be available in appropriate circumstances. The complainant may decide to take out a summons without the help of a solicitor. There are no court fees for these orders. Completed applications are dealt with in the listing office, and when the summons has been served on the defendant a hearing date will be fixed, usually about 6 weeks later.

2. The Magistrates' Court

The bench is composed of 3 magistrates including one woman, and these are drawn from the "domestic panel". This panel consists of those magistrates who are prepared to hear domestic cases. The bench is not legally qualified, and their function is to judge the merits of the cases, within the confines of the law. The bench is assisted by the legally qualified Court Clerk who provides legal expertise, and organises the hearings, which take place in private.

When a matrimonial order is sought, the evidence of the complaint is heard first. After the judgement on the complaint, if there are children in the family, the court will consider making an order with regard to them. Should a welfare report be required, the part-heard case will be adjourned, and a hearing date fixed by the Clerk, allowing sufficient time for the preparation of the report. The same bench must hear the case when it returns to court.

3. Processing the Orders

Orders of the court are processed and retained in the court office. A copy is sent to each party. If a matrimonial supervision order is made, the court should issue a further copy of the report to the supervising officer, but it appears that this may be overlooked unless the supervising officer approaches the court for the order.

4. Variations

A petitioner may file an application for a variation of a matrimonial order, and no charge is made. The hearing takes place within 3 to 4 weeks. If legal representation is desired, the parties may apply for legal aid although there is some reluctance to grant it for variations. Delays can occur in these cases when there are difficulties over serving applications on the defendant, or when either party fails to appear in court, or when the hearing is adjourned for reports.

5. Appeals

An appeal against a matrimonial or interim order may be made to the High Court, but the High Court may order a re-hearing by a magistrates' court (S 11 MP(MC)A 1960).

C. GUARDIANSHIP PROCEEDINGS

1. The County Court

There is no set form for making an application for a Guardianship of Minors Act 1971 (GOM) order in the county court. A solicitor is likely to be employed, and he will prepare an originating application and an affidavit in support of the application. These documents are filed in the court, with the court fee of £15, and a hearing date is fixed. The case is heard before a judge in chambers.

Applications for variations of guardianship orders can be made without a court fee. An appeal can be made to the High Court from an order made on an application by a county court (S 16 GOM 1971). Guardianship orders are processed in the court office in the same way as orders made under MCA 1973.

2. The Magistrates' Court

The petitioner can obtain advice and assistance from the Magistrates' Advice room as described above (p 18). The complainant may take out a summons on the form provided, without the assistance of a solicitor, and no court charge is made. Legal aid may be available to a complainant who uses the services of a solicitor. Application forms for variation orders are also available from the court, and no charge is made for this type of order. An appeal can be made to the High Court when the court makes or refuses to make an order, unless the court considers that the matter is one which would more conveniently be dealt with by the High Court, in which case there is no appeal to the High Court (S 16 GOM 1971).

D. CUSTODY ORDERS

1. Court Custody Orders

In divorce proceedings, the court may make such orders as it thinks fit for the custody and education of any child under 18 before or after the final decree, or when such proceedings are dismissed after the beginning of a trial (S 42 MCA 1973). When a child is already in Local Authority care, the court does not usually exercise its power to make a custody order (H V H [1973] Fam 62; [1973] 1 All ER 801). When a magistrates' court order for custody has been made earlier, the court may make an order which supersedes the earlier one, and the magistrates' court should be notified accordingly. The divorce court has overriding jurisdiction in custody decisions (Vigon v Vigon & Kuttner [1929] P 157 245 CA). The court may disregard a covenant as to custody in a deed of separation (Jump v Jump [1883] 8 P.D. 159). Any agreement to give up in whole or in part rights in relation to a child is unenforceable (S1(2) GA 1973).

In guardianship proceedings, the court may make such orders regarding the custody of the minor as the court thinks fit, having regard to the welfare of the minor and to the conduct and wishes of the mother and father (S 9(1) GOM 1971).

In matrimonial proceedings in the magistrates' court, until the introduction of the DP&MCA 1978, the court might make provision for the legal custody of any child of the family under the age of 16 years (S 2 (1)(d) MP(MC)A 1960). The age of the child was raised to 18 years in line with divorce proceedings under S 8(2) DP&MCA 1978. Once an application has been made by a party to a marriage for an order, then, if there is a child of the family under the specified age under either law, the court should not dismiss the case or make a final order on the application until it has decided whether to exercise its power, and if so, in what

manner.

In many cases there is agreement between the parties on custody and access, and the arrangements have been in practice for some time before the court hearing. Although the court is not bound to endorse these arrangements, it is rare for it to do otherwise in agreed cases. A Practice Direction stipulates that when the parties agree that custody should be vested in the two of them jointly, and only one of them appears at the appointment, the court ought not on that appointment to make an order which is inconsistent with the agreement. If the court is unwilling to make the agreed order, it should adjourn to give each party the opportunity to be heard. Further, where a petition contains a prayer for custody and the respondent has indicated in writing (in the acknowledgement of service or otherwise) that he or she wishes to apply for custody to be vested in the two of them jointly, the court should proceed on the basis that the question of custody is at issue, and should not make an order for custody or joint custody except with the agreement of both parties or after giving each of them the opportunity to be heard ([1980]1 All ER 784; [1980]1 WLR 301).

The court may make a variety of custody orders:

1. A parent may be given sole custody, including care and control, under divorce proceedings, guardianship proceedings, and matrimonial proceedings in the magistrates' court.

2. Split custody and joint custody orders may be made, the former giving custody to one party and care and control to another, and the latter giving joint custody to the two parties, and care and control to one. Both types of order may be made under divorce proceedings. Under the GOM 1971 before it was amended by the DP&MCA 1978, both orders might be made (Re W (J.C.) [1964]Ch 202 for split orders, and Jussa v Jussa [1972]2 All ER 600 for joint orders). Under the 1960 MP(MC)A there was no power to make split

orders (Wild v Wild [1969] P 33). Nor should joint custody orders be made under the 1960 Act "save in exceptional circumstances" (Clissold v Clissold (1964 109 Sol Jo 220). However such an order was made in S v S (1965) 109 Sol Jo 289. Rayden (1979:f348) states that where the parties agree, such orders may be made under this statute. The GOM 1971 and MP(MC)A 1960 were amended by the DP&MCA 1978. Neither split or joint custody orders are now possible. This follows from the requirement that legal custody should not be given to more than one person, ruling out joint custody orders, and that the court may grant to the non-custodian parent all or such of the parental rights and duties comprised in legal custody other than the right to the actual custody of the child, ruling out the separation of custody from care and control (Ss 8(4) and 37). In effect the non-custodian parent may be given the same rights as were granted by a joint custody order, without the use of such an order.

3. Sole custody may be given to a third party, perhaps a relative. Split custody orders may also be made under divorce legislation, for example a parent might be given custody and a third party, care and control.

4. In exceptional cases, care orders may be made removing parental rights over the child from either or both parents. Wardship proceedings also remove responsibility from the parents for major decisions in the up-bringing of the child.

5. The court may declare that either party to the marriage is unfit to have custody of the children (S 42(3) MCA 1973).

2. What is Custody?

Custody has given rise to problems of interpretation over the years. The difficulty stems from the association of custody and parental rights. Parental rights of Guardianship belong to both parents equally prior to the making of a custody order. Nevertheless a custody order has been understood to grant most parental rights to the custodian parent, and these rights are held by virtue of the court order, rather than by virtue of parenthood. A recent High Court case has denied this

association between custody and parental rights, and makes it difficult to know what is to be understood by custody.

At common law, the father had Guardianship of legitimate children to the exclusion of the mother. Not until the Guardianship Act 1973 (GA) was the mother put on an equal footing with the father (S 1). Parental rights are now held by the mother equally with the father. This change did not affect the position of a parent's application for custody, as the welfare principle had been introduced into statute law in the Guardianship of Infants Act 1925. Section 1 of this act enjoins the court not to take into consideration, when deciding on custody or upbringing, the claim of the father or any common law right of the father in respect of custody as superior to that of the mother. The case has to be determined on the principle of the welfare of the child as the first and paramount consideration. The effect of S 1 GA 1973 was that both parents held parental rights prior to a custody hearing.

When mothers were first given custody of a child in the second half of the 19th century, the order was understood to grant her actual possession and day-to-day care of the child only (Eekelaar, 1973:214). By the mid 20th century, custody was interpreted in a much broader sense. Sachs J described 2 meanings of the term (Hewer v Bryant [1970] 1 QB at 372): "One is wide - the word being used in practice as almost the equivalent of guardianship; the other is limited and refers to the power physically to control the infant's movements". The custody adjudication was understood to decide custody in the wide sense. It was normally understood to include care and control, unless the court made a split order. The practice arose in the post-war years of granting custody to the "unimpeachable" father, and care and control to the mother (Wakeham v Wakeham [1954] 1 All ER 434). By this means the father retained the right

to make the major decisions about the child's upbringing, even though it was impractical for him to have actual possession of the child. Joint custody orders have also been made (Jussa v Jussa [1972]2 All ER 600) where the parents share in making major decisions about the child's upbringing, while care and control may be given to one parent.

Although a custody order was considered to grant a "bundle of rights"[1] to the custodian parent, the non-custodian parent retained certain parental rights (Re T [1963]Ch 238). Examples of these rights are: to agree to the child's adoption; to appoint a testamentary guardian; to succeed on the child's death; and to agree to the child's name being changed.[2] However the non-custodian parent was not thought to retain any of the "bundle of rights" associated with custody unless the court specified otherwise, as it frequently does when it grants reasonable access to the non-custodian parent.

A slightly different meaning of custody was introduced by the Children Act 1975 (CA) when custody was awarded to third parties. Legal custody was defined as "so much of the parental rights and duties as relate to the person of the child", and actual custody was reserved for the person who had"actual possession of the child"(Ss 86 & 87). These definitions were extended to parental custody suits in guardianship and

1. Sachs J in Hewer v Bryant [1970]1 QB 357).

2. The Divorce Court rule on a change of surname is quite clear. MCR 1977 r 92(8) states: unless otherwise directed, any order giving a parent custody or care and control of a child shall provide that no step (other than the institution of proceedings in any court) shall be taken by that parent which would result in the child being known by a new surname before he or she attains the age of 18. In W v A [1981]1 All ER 100 CA, Dunn LJ rejected the suggestion that a change in a child's surname was not very important, and dismissed the mother's appeal against the court's refusal to allow a change in the surname of 2 children aged 10 and 12, in spite of their expressed wishes to be known by their mother's new name.

matrimonial proceedings in the magistrates' court by Ss 8 & 36 DP&MCA 1978. The effect of this change was that the parental rights associated with the property of the child, which were not included in the definition of legal custody, were added to the residual parental rights which were held jointly by both parents after the custody adjudication. This legislation did not affect the MCA 1973 so custody in divorce proceedings is slightly different from custody in guardianship proceedings or in matrimonial proceedings in the magistrates' court. The DP&MCA 1978 also stipulated that legal custody could not be given to more than one person, but that the court could grant to the non-custodian parent "all or such as the court may specify of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the child) and shall have those rights and duties jointly with the person who is given the legal custody of the child" (Ss 8(4) & 37). Joint custody orders can therefore not be made under this legislation although the divorce court retains the option to make such orders. However the facility to grant to the non-custodian parent whatever additional parental rights the court wishes means that the same effect can be achieved without the use of a joint custody order. Although the legislation referred to above complicated custody, it did not make any major changes. Custody is clearly understood in the wide sense associated with parental rights.

A different interpretation of custody has been introduced in Dipper v Dipper [1980] 2 All ER 722. In this case, the father was given custody of the children, and the mother care and control. The judge at first instance declared his intention of retaining for the father "the say about their future upbringing" and in particular the right to decide on the education of the children. The mother appealed. Ormrod and Cumming-Bruce LJJ, granted the appeal and argued that it was a misunderstanding to believe that the custodian parent had the right to

control the children's education, for "neither parent had any pre-emptive right over the other" with regard to major decisions such as education. Their Lordships appear to have interpreted S 1 GA 1973 to mean that both parents retain parental rights when a custody decision is made.

This is a curious interpretation. Section 1 states that "in relation to the custody or upbringing of a minor, a mother shall have the same rights and authority as the law allows to a father". At that time, the rights allowed to the father by law when a custody order was made in favour of the mother did not include the "bundle of rights" associated with custody. This section changed the position of the mother in relation to the child during the marriage, and it meant that at the time of any custody application, parental rights were held equally by the parents. Cumming-Bruce LJ further denied that custody conferred parental rights at all, and referred to any connection between custody and parental rights as a "fallacy which continues to rear its ugly head". Presumably he considers that parents retain parental rights jointly when a marriage is dissolved, so that the custody adjudication is concerned only with the allocation of the right to care and control of the child. This interpretation of custody is a return to its original meaning, and is at odds with the definition of legal custody in the DP&MCA 1978, where the term is defined in its broader sense. There is confusion at present therefore as to whether the term custody is to be understood in its wider sense involving parental rights, or narrowly to mean care and control only. This confusion was reflected in some of the interviews.

3. The Welfare Principle

Applications for custody must take into account the welfare principle as it appears in S 1 GOM 1971. "Where in any proceeding before any court . . . the custody or upbringing of a minor is in question, the

court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration ". Any residue of doubt about the weight to be given to other considerations was finally removed by the judgement of Lord MacDermott when he considered the scope and meaning of the words "shall regard the welfare of the infant as the first and paramount consideration".

> Reading these words in their ordinary significance, and relating them to the various classes of proceedings which the section has already mentioned, it seems to me that they must mean more than that the child's welfare is to be treated as the top item in a list of items relevant to the matter in question. I think they connote a process whereby when all the relevant facts, relationships, claims and wishes of parents, risks, choices and other circumstances are taken into account and weighed, the course to be followed will be that which is most in the interests of the child's welfare as that term has now to be understood. That is the first consideration because it is of first importance and the paramount consideration because it rules upon or determines the course to be followed . . . The welfare of the child is not to be balanced against the rights of an "unimpeachable" parent and the interests of justice. Earlier cases . . . should not be followed (J v C [1970] AC 668).

The determination of what is in the best interest of the child is by no means an easy matter.[3] The courts treat each case on its own merit and do the best they can in the circumstances bearing in mind certain considerations deemed to be relevant.

4. Relevant Considerations

The mother and father must be treated alike in relation to

3. See the discussion of the welfare principle in Chapter 3.

applications for the custody of a child (S 9 GOM 1971 as amended by S 2(1) GA 1973). There is no maternal presumption in law. Custody is given to whichever parent is thought likely to be the better parent to bring up any particular child. In fact, the mother is given custody much more often than the father (Eekelaar et al, 1977:table 34). The court accepts that the needs of young children and of girls in general are better served by the mother in most cases (Re K [1977]1 All ER 647). The father however is generally thought to be the more suitable parent to look after adolescent boys when this is possible (Re C(A) [1970]1 All ER 309 CA). The age and sex of the child are therefore two considerations to be taken into account when determining the best interest of the child. The courts are reluctant to split up siblings, but when there are good reasons for doing so the courts like the children to have frequent access to each other (Re P[1967]1 WLR 818 & Doncheff v Doncheff (1978)8 Fam Law 205). In general, the courts prefer the children to remain in their own familiar environment. Eekelaar found that in the vast majority of cases, the court upholds the status quo arrangements (Eekelaar et al, 1977:64). The wishes of an older child will be considered by the court. Bromley stated that this is "not so that it can give effect to those wishes, but to be better able to judge what is best for its welfare" (1981:297). Cretney remarked that "the child's view may count for very little, either because they merely reflect the wishes of one of the parents, or because they are plainly contrary to his long-term interests" (1979:497). It is usual for the wishes of the children to be ascertained by the officer preparing welfare reports. The divorce court judge also has power to interview children in private, although magistrates do not have this power (Re T (1974)4 Fam Law 48).

The behaviour of the parties is taken into account, but only in so far as it affects the child. Singleton LJ stated that " a woman who

commits adultery may be a good mother" (Willoughby v Willoughby [1951] P at 192). Evidence of parental unfitness or of a bad character which may influence the children adversely may lead the court to deprive that parent of custody (H v H&C [1969]1 All ER 262). Provided that no undesirable social practices are associated with a religion, the court does not favour one religion against another (J v C [1969]1 All ER 788). A parent who has "kidnapped" a child from the party with de facto care of that child, is likely to be ordered to return the child pending the custody decision (Witter v Drummond [1980]1 FLR 393) and such behaviour is condemned by the court (Jenkins v Jenkins (1978)9 Fam Law 215 CA). If a party proposes to remarry, the future step-parent may be taken into account. In Hutchinson v Hutchinson (1978)8 Fam Law 140, it was considered not to be in the child's interest to be brought up by the mother's co-habitee. In Re F [1969]2 All ER 766, both parties proposed to remarry, and Megarry J considered that the man's co-habitee was not likely to be as good a mother substitute as the woman's co-habitee would be a father substitute, bearing in mind the greater demands of a young girl on a mother substitute than on a father substitute. This was one of the factors which tipped the balance in favour of granting care and control to the mother.

The above considerations are not principles, but are "judicial statements of general experience whose application depends on the facts of the case" (Cretney, 1979:496).

E. ACCESS ORDERS

1. Jurisdiction of the Courts

As access is included in the term custody, orders for access may be made as the court thinks fit, as referred to above under custody orders.

DP&MCA 1978 extended the power of the magistrates' court to order access to grandparents (Ss 14 & 40 DP&MCA 1978). Grandparents who wish to seek an access order in divorce proceedings must first obtain leave to intervene in the suit. Access to a parent may be granted under wardship proceedings (Re F [1969]2 All ER 766). It has also been a condition attached to adoption orders (Re J [1973]2 All ER 410) and reaffirmed by the Court of Appeal in Re S [1975]1 All ER 109. When custodianship comes into force under S 33 CA 1975, the court will have power to make an access order to the parents (S 34(1)(a)). However the court does not have power to make an access order in favour of a parent when the child is in the care of the Local Authority under Ss 2 & 3 of the Child Care Act 1980, or S 1 of the Children and Young Persons Act 1969. The discretion to grant or withhold access is held by the Local Authority (Re H (K & M)(1972) 116 Sol Jo 664).

The normal type of order made by the court is for reasonable access. The parties decide what is reasonable although they may be questioned on their access practices by the judge or magistrates. Where reasonable access is not considered sufficient, the court should determine the access terms. In Mnguni v Mnguni (1979) 10 Fam Law 2, Ormrod LJ referred to the undesirability of leaving welfare officers to determine the terms of an access order, and added that the court should make the decision itself. In Orford v Orford (1979)10 Fam Law 114 CA, Orr LJ criticised the decision of the judge at first instance for suspending access until the Divorce Court Welfare Officer considered it to be appropriate.

The court has power to define access periods, order overnight staying access (R v R (1979)10 Fam Law 56 CA), add access conditions, delete access or direct that access should be supervised. A Practice Direction requires that welfare officers or similar persons should only

be involved after every effort has been made to enlist the help of other persons such as mutual friends or unprejudiced relatives; applications for supervised access should not be made without the consent of the person concerned; and the supervision should be confined to a very few occasions, the number of which should be specified in the order ([1980]1 All ER 1040; (1980)1 WLR 334).

Delays in arranging access hearings was criticised by the judge in Leech v Field (1979)10 Fam Law 116 CA.

The enforcement of access orders, when there is resistance from the custodian parent, presents difficulties for the court. In the case of non-compliance in the divorce court, the party is in contempt, and may be fined up to £500 or imprisoned for up to 1 month (S14 Contempt of Court Act 1981). In the magistrates' court, the party may be fined up to £1000 or imprisoned for a period not exceeding 2 months (S 78 DP&MCA 1978). However Orr LJ said that although imprisonment was available to the courts in such cases it should be used very sparingly in the context of custody and access (R v R (1979)10 Fam Law 56 CA). In another recent case, V-P v V-P (1978)10 Fam Law 20 CA, Ormrod LJ warned the custodian mother that she was risking losing the custody of the child by her attitude to the access of the father, and he ordered that custody should be reviewed the following year. The court transferred custody of a child to the mother in Cutts v Cutts (1977)7 Fam Law 209 when the father frustrated the mother's access to the child. Such a drastic measure may not be available to the court in many cases, and must be considered by the court to be in the best interest of the child.

2. Relevant Considerations in Granting and Deleting Access

Wrangham J in M v M [1973]2 All ER 81 stated that "no court

should deprive a child of access to either parent unless it was wholly satisfied that it was in the interest of the child that access should cease, and that was a conclusion at which the court should be extremely slow to arrive. Access was to be regarded", he said, "as a basic right of the child rather than a basic right of the parent". In an earlier case, Willmer LJ had described periodic access of a mother to her children as "no more than the basic right of any parent"(S v S & P [1962]2 All ER 1). Regardless of whether the right of access lies with the child or the non-custodian parent, the courts are very reluctant to refuse access. A court might deprive a mother of access because she was not a fit and proper person to be brought into contact with the children, for example "if she were a person with a criminal record or one disposed to act with cruelty against children or something of that sort" (S v S & P [1962]2 All ER 1). In another case, Rashid v Rashid (1978)9 Fam Law 118 CA, a father who "kidnapped" his children and broke the access orders had his access deleted. The court must be guided by the welfare principle in all decisions regarding access, which is included in the definition of custody (S 52(1) MCA 1973). However access will not be forced on an unwilling child (B v B [1971]3 All ER 682 CA). The child in this case was 16 years old. It is not clear whether the wishes of a younger child would influence the court to refuse to make an access order.

Bromley (1981:289) stated that "account must also be taken of the effect that access may have upon the parent with actual custody; if it will adversely affect his relationship with the child, it will not be in the latter's interest to grant it". This statement might suggest that the custodian parent's dislike of continued contact with the other party was sufficient reason to delete access, but an examination of the details of the case cited does not uphold this interpretation. The authority cited is M v J (1977)8 Fam Law 12. A putative father applied

for access and Balcombe J said the following: " the court should weigh carefully the past behaviour of the father up to the hearing and in the possible future. These findings may weigh heavily enough to cancel out the blood tie, and association and attachment factors particularly if attachment was lessened or missing". In this case, the father was considered to be rootless and unstable, and the mother feared the effect he might have on the welfare of the child. Balcombe J added "in considering the welfare of the child, regard must also be taken of the effect of access on the mother in whose care the child has been placed, recognising the fact that the fears of the mother, if genuine (as in this case), may have an effect on the welfare of the infant and should be taken into account". In Re G [1956] 2 All ER 876, the father who had lived with the mother for some years was denied access on the basis of the emotional stress that continued contact with the father caused the mother. However this argument did not find favour in S v O [1965] Ch 23. In all these cases, the parties were not married to each other. It appears that the fears of the custodian parent regarding the possible adverse effect of access on the child must be considered by the court to be genuine, before access is deleted.

F. WELFARE REPORTS, MEDICAL EVIDENCE AND MATRIMONIAL SUPERVISION ORDERS

1. Welfare Reports

In divorce proceedings in the county court, a judge or registrar may at any time refer to a court welfare officer for investigation and report, any matter which concerns the welfare of the child (MCR 1977 r 95(1)). Either party may request the registrar to call for a report, and if the registrar is satisfied that the other party consents and that sufficient

information is available to enable the officer to carry out the investigation, the registrar may order a report (MCR 1977 r 95(2)). The court may specify specific matters on which the report is to be made, but this specification does not restrict the reporting officer from bringing to the notice of the court any other matters which he or she considers the court should have in mind (Practice Direction [1981] 2 All ER 1056). In guardianship proceedings welfare reports may be ordered by the court (S 6 GA 1973). Under matrimonial proceedings in the magistrates' court, the 1960 Act stipulated that welfare reports could be ordered after the complaint was heard (S 4(2)). Section 12(3) DP&MCA 1978 however allows welfare reports to be ordered at any stage of the proceedings.

Welfare reports in divorce proceedings are prepared by a court welfare officer who may inspect the court file. Reports are written and the parties are entitled to inspect the report and buy a copy. The welfare officer should be notified by the registrar of the date of the hearing (MCR 1977 r 95). The solicitor should consult the divorce court welfare officer to get an estimate of when the report is likely to be ready, and apply for a hearing date as soon as possible (Practice Direction [1972] 2 All ER 352). Reports are stamped "Confidential to the court: not to be published". A recent Practice Direction states that the following wording should appear on all reports prepared by the Court Welfare Officer at the Royal Courts of Justice: It is a contempt of court . . . to show or reveal the contents of this report to any person who is not either a party to the proceedings or the legal advisor to such a party. In addition, you may be liable for damages for libel or slander on the publication of its contents ([1982] 1 WLR 234).

Welfare reports in guardianship proceedings and matrimonial proceedings in the magistrates' court may be written or oral, and may be

prepared by a probation officer or an officer of the Local Authority. Written reports are given to each party to the proceedings or to his counsel or solicitor before or during a hearing. Oral reports are made to the court. The reporting officer may be required to give evidence by the court and must do so if asked by the counsel or solicitor for a party (S 4 MP(MC)A 1960; S 6 GA 1973; S 12 DP&MCA 1978). Hearsay evidence in a welfare report is unavoidable and officers should report their own observations and assessments (Thompson v Thompson (1975) The Times March 12th CA). It has been said that when the court differs from the welfare officer's views, it is essential for the court to explain why it did so (Clark v Clark (1970) 114 Sol Jo 318). One welfare report is almost invariably more satisfactory than two by different officers (B v B (1973) The Times Jan 23rd).

It has been known for the court to order an independent welfare report from outside the court's welfare service. This practice was condemned by Ormrod and Oliver LJJ and Purchas J in Cadman v Cadman (1981) The Times Oct 13th, when grave doubts were expressed as to whether in custody cases, there was jurisdiction to appoint a social worker from outside the court's welfare service. Ormrod LJ said that there was no basis for suggesting that any of the court welfare officers was acting other than in an independent capacity. Nor was there any justification for departing from the usual practice of relying on the reports of the court welfare officers. Their Lordships also said that there was no power to order the other party to be examined by an independent social worker. The social worker had been instructed unilaterally and this was objectionable. It is not unusual however for parties to produce independent reports in court as evidence.

2. Medical Evidence

Medical evidence may be accepted by the court. In the case of a sick child, this evidence weighs more heavily with the court than medical evidence in the case of a happy normal minor (J v C [1970] AC 668). Bromley (1981:293) wrote "the reception of medical evidence and particularly of psychiatric evidence, is becoming more common, and there is a danger that a doctor who is consulted and called by one side, may be, at least sub-consciously, biased in favour of that party. It is highly desirable, therefore, that a paediatrician or psychiatrist should be consulted jointly by both parents, or if they cannot agree to do so, that a Guardian ad litem should be appointed so that he can take the necessary steps" (B(M) v B(R) [1968]3 All ER 170 CA). A Practice Direction stipulates that when the Official Solicitor is involved, neither party should cause the child to undergo any form of medical examination with a view to providing evidence in the proceedings without notice to the Official Solicitor ((1968)1 WLR 1853). Cretney (1979:449) considered that "if both sides agree on the need for an examination, and the identity of the psychiatrist, the court will normally give effect to their wishes".

In custody applications, courts do not have the power to order medical reports on children or adults; the statutes allow the courts to order welfare reports only. An adult who has a history of psychiatric illness might voluntarily undergo a medical examination in order to demonstrate to the court his or her ability to have custody of or access to the child, and this report might be presented to the court in evidence. If a child was undergoing psychiatric treatment, the reporting officer might interview the doctor, with the consent of the parents, and report the doctor's views to the court in the report.

3. Matrimonial Supervision Orders

When the court makes an order for the custody of a child, and it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may order that the child be under the supervision of a local authority specified by the court, or under the supervision of a probation officer. This power applies to guardianship proceedings (S 2(2)(a) GA 1973), divorce proceedings (S 44(1) MCA 1973), and matrimonial proceedings in the magistrates' court (S 2(1)(f) MP(MC)A 1960, now replaced by S 9(1) DP&MCA 1978). The above legislation also stipulates that a matrimonial supervision order may not be made in respect of a child who has been committed to the care of a local authority. The term "matrimonial supervision order" is used to indicate supervision orders made under any of the above legislation.

The matrimonial supervision order form states that the custodian parent shall give notice to the Court Clerk of any change of the child's address. The legislation does not give the courts power to include requirements which are binding on the child or on the parents, when making the supervision order. The officer has the power to apply to the court for the variation or discharge of the order, or for directions as to the exercise of the powers of the officer under the order (MCR 1977 r 93(4)). It is by no means clear what powers this rule refers to when a supervision order is in force under the above legislation.

G. THE PROCEDURE FOR WELFARE REPORTS & MATRIMONIAL SUPERVISION ORDERS

Probation Service and Social Services practices with regard to welfare reports and matrimonial supervision orders appear to vary from one area to another. The practices in the city of the study will be described.

1. Welfare Reports in the Divorce Court

A probation auxiliary collects the requests for welfare reports and enters the details in a diary. A hearing date is not normally arranged immediately, although occasionally a judge, especially a High Court judge, fixes the hearing date when he orders the welfare report. The Divorce Court Welfare Officer (DCWO) is given the requests and distributes them to the field team in the area in which the youngest child is living. Occasionally the DCWO is requested by the judge to prepare the report when there are "special features" which include cases where one party is a member of the legal profession or a welfare officer.

If a social worker has a statutory responsibility for the child, i.e. the child is in care or supervision from the juvenile court, this social worker may be asked to prepare a report, which may be incorporated into the main probation officer's report or presented separately. Social workers prepare full reports only when they are familiar with the total situation.

If the parties reside locally one officer prepares the report. If one party lives in another area, the judge may order that one officer should prepare the report (B v B (1973) The Times 24 Jan). Sometimes the reporting officer travels to the area to interview the party and to make any other enquiries considered necessary. In other cases travelling outside the area is avoided by a local probation officer reporting on the home circumstances of the distant party, and the reporting officer seeing the party when he or she is in the city for access purposes. Social Services are less likely to condone travelling for the preparation of reports than the Probation Service. One social worker said that she would have to make out a strong case before a journey of 10 to 20 miles was sanctioned;

travelling to the South, for example, would not be permitted.

The completed reports are sent to the DCWO for filing in the county court. Solicitors are expected to apply for a hearing date, but the DCWO reported that occasionally the case is dropped when the report is seen by the solicitor and his client, and this includes cases in which the reporting officer recommended supervision of the child/ren. If the enquiries reveal that a child is in some sort of danger, the practice is to attach a formal note to the welfare report; this is then brought to the attention of the judge, who may ask for an immediate listing. Such cases are very rare.

The reporting officer may be requested to attend the hearing ([1981]2 All ER 1056) or may wish to do so. However the DCWO rarely knows the dates of the hearings and has to make a special request to the court for this information. This is in breach of MCR 1977 r 95(c) which states that the registrar shall give notice to the officer of the date of the hearing.

2. Welfare Reports in the Magistrates' Court

Two senior duty probation officers take it in turn to be available in the court building when the 2 domestic courts are sitting. When a welfare report is ordered the court clerk sends for the duty officer who interviews the parties briefly, and prepares a form giving details of the parties and the case. A probation auxiliary takes these forms to the main Probation Service officer and records the details in a diary kept for that purpose, including the date of the hearing, which is determined by the court clerk at the initial hearing.

These forms are sent to the field probation team in the area

where the youngest child is living, and a reporting officer is appointed. The name of this officer is added to the information in the diary. Some welfare reports are prepared by the duty officer, including cases where the report is required quickly or where difficult problems exist.

As the date of the hearing approaches, the probation auxiliary contacts the reporting officer to ensure that the welfare report is ready for the court.

Each day the duty officer is supplied with a list of cases to be heard in the two domestic courts, and on the list he adds a note of any case where welfare reports were ordered, with the name of the reporting officer. The duty officer is responsible for taking the welfare report to the court and answering any questions that arise, unless the court requests the presence of the reporting officer at the hearing.

3. Matrimonial Supervision Orders

Matrimonial supervision orders, made in either the county court or the magistrates' court, are taken to the Probation Service Office by the probation auxiliary. These orders are usually made on the recommendation of the reporting officer in a welfare report, although occasionally a matrimonial supervision order is made in the county court without such a recommendation. Generally the Probation Service supervises children over 13 years old, although Social Services may wish to supervise if the family is known to them already. Negotiations take place between the two services to decide which should supervise in appropriate cases, and the reporting officer indicates in the welfare report which service is to provide supervision. Most supervision orders in the city are allocated to Social Services.

The orders that are to be supervised by the Probation Service are sent to the field team in the area in which the child is living, and the reporting officer from that team may wish to supervise, depending on his or her work load. It is not unusual for the reporting officer to become the supervising officer.

The orders that are to be supervised by Social Services are sent by the Probation Service office to the senior divisional officer in the area in which the child is living, for allocation to a social worker. The reporting officer in the Probation Service has orders from the DCWO not to send copies of welfare reports to Social Services. However welfare reports were found in the files of all but a few of the social workers who were operating matrimonial supervision orders. Most of these social workers were not the first supervising officer on the case, and assumed that welfare reports were normally sent by the reporting probation officer or could be obtained on request. One social worker, who was allocated a matrimonial supervision order recently, said that she had been involved with the family prior to the hearing, but had asked for the report to be prepared by a probation officer because she felt too involved to make an impartial judgement. After the hearing the court clerk informed her of the outcome and enclosed a copy of the welfare report. She did not get a copy of the order for some time, and had to contact the court office to remind them to send one to her.

The duty probation officer in the magistrates' court and the DCWO reported that frequently there were long delays before copies of matrimonial supervision orders reached the Probation Service office. Often supervision started before an official court order was received. Frequently the supervising officer had to contact the court office to get a copy of the order, and it appeared that the court office procedure

for automatically sending copies of matrimonial orders to the Probation Service was often overlooked.

A supervising officer may want to return to court for directions, or a Care order, or to transfer or terminate the order. To do so, a summons is taken out and a hearing date arranged in the usual way.

Reference will be made to the law relating to Children Orders and the practices of the courts in matrimonial and guardianship proceedings in the following empirical study.

CHAPTER 3 : REVIEW OF THE LITERATURE

A. EMPIRICAL STUDIES OF LEGAL PRACTICES

A few empirical studies have been published in this country concerning Children Orders. McGregor et al (1970) conducted a national study of the matrimonial jurisdiction of Magistrates' Courts. Elston, Fuller and Murch (1975) studied 3 county courts and Maidment (1976) reported on a small scale study of a North Midlands county court. Eekelaar et al (1977) published the results of a major study involving a sample from 10 divorce courts in different parts of the country (the Oxford Study).

The practices of judicial officers have also been investigated. Hall (1968) inquired into the arrangements made by Judges, Special Commissioners and Registrars under S 33 Matrimonial Causes Act 1965 for the care and upbringing of children. McGregor et al (1970) obtained information from the Justices' Clerks administering 96% of the country's summary courts and holding 99% of all live orders. Barrington Barker et al (1977) interviewed 81 of the 142 registrars in England and Wales for information on the exercise of their matrimonial jurisdiction.

Three of the studies referred to above, Hall (1968), McGregor et al (1970) and Elston, Fuller and Murch (1975) included interviews with parties to separations and divorces, as did the study by Murch (1980).

The findings of these studies are referred to in the text. The Oxford study is used to compare the findings of the magistrates' court in the city of the study with those of divorce courts in England and Wales, as explained in Chapter 1.

B. STUDIES OF WELFARE PRACTICES

1. Welfare Reports

The annual number of welfare reports prepared by the Probation and After-Care Service increased between 1975 and 1980. This rise reflected the increase in the number of divorce applications in the same period, and the proportion of cases investigated remained more or less constant throughout. The figures did not indicate how many welfare reports related to contested custody cases.

Divorce Petitions, Welfare Reports and Matrimonial Supervision Orders, 1975-1980

Year	Divorce Petitions	Inquiries - Custody & Access	% Divorce Petitions	Supervision Orders	% Divorce Petitions
1975	139,128	17,953	13.0%	2,311	1.7%
1976	144,814	18,443	13.0%	2,701	1.9%
1977	168,169	19,606	11.7%	2,813	1.7%
1978	163,567	19,432	12.0%	3,263	2.0%
1979	163,861	19,879	12.2%	3,372	2.1%
1980	171,992	20,475	11.9%	3,622	2.1%

Divorce figures: O.P.C.S. Monitor; welfare report and matrimonial supervision order figures: Probation and After-Care Statistics, Home Office; percentages calculated from the figures quoted.

Some authorities would like to see welfare officer involvement in every case of a broken home (Scarman, 1968; Hall, 1968; Mortlake, 1970), although the shortage of probation officers was recognised as a hindrance to the achievement of this ideal. Not all agree that fuller information would lead to better decisions being made in custody cases (Maidment, 1972). This is because most welfare reports support the arrangements already made

by petitioners (the Oxford study; Maidment, 1976). The Oxford study recommended improving the awareness of the custodian parent of available resources, rather than the compilation of reports which rarely influence judges' actions.

The criteria for the selection of cases for welfare reports has received scant attention. In Northumbria, the Registrar, Judges and Probation Service agreed on criteria for welfare intervention, including not only the preparation of reports by the Probation Service, but also their short-term involvement with the parties to the proceedings at the time of crisis. Reports were prepared in 15% of cases, and the Probation Service felt that their intervention had resulted in a more appropriate use of their limited resources (Northumbria Probation Service, 1977). In Avon a specialist welfare team was created in 1977 with the objective of moving away from their "traditional reporting function" towards "helping the parties to a divorce to separate in the most constructive way possible", with the primary emphasis on counselling and conciliation (Fraser, 1980).* The practice was established of arranging a directions hearing before the registrar, attended by the parties, solicitors and a welfare officer. The emphasis of the hearing was to encourage the parties to try to avoid disputes over the children. The hearings were often adjourned to enable the welfare officer to identify the feelings underlying the disputed issues, and work on them with the parties. In the 2 years following the introduction of this practice, about 1 in 3 of the children involved in divorce petitions were covered by some form of divorce court welfare intervention. The conciliation work was reported to be cheaper and faster, and more effective for many parties.

Murch (1980) reported that welfare officers generally made a favourable impression on parents, and their neutrality was remarked on by

* Counselling is the process of helping a person to come to terms with events in his/her past. Conciliation or mediation is the process of helping separated parents to reach agreement over specific matters e.g. access.

many. A minority of parents viewed their welfare officer unfavourably, and a number objected to persistent, forceful and insensitive questioning. In almost every case the children were interviewed, and some parents were uneasy when these interviews took place in their absence.

2. Matrimonial Supervision Orders

The annual number of matrimonial supervision orders made by the courts increased between 1975 and 1980. This rise matched the increase in the number of divorce applications, and the proportion of cases in which orders were made remained more or less constant throughout the 5 years (see table above).

Griew and Bissett-Johnson (1975) thought that making a supervision order depended almost invariably on the existence of a welfare report recommending such action, in both the divorce and magistrates' courts. The Oxford study found this to be so (Para 5.5), but Maidment (1976) found welfare report recommendations in only 50% of cases.

The criteria used for recommending matrimonial supervision orders have been listed by Millard (1979), a Probation Officer. They are as follows:

1) on-going problems of a social/personal character;
2) some remaining transitional problems temporarily unsolved;
3) elements of risk in the character of the custodian parent;
4) access disputes.

Hall (1968) had criticised the legal requirement that these orders should be made only in "exceptional" circumstances and recommended that the word "exceptional" should be deleted.

Complaints have been made by welfare officers, e.g. Griew and Bissett-Johnson (1975), about the lack of powers of the supervisor, whose only express powers are those of application to the court. Substantial support was claimed by Griew and Bissett-Johnson for some strengthening of the supervisor's position in relation to private access to the child, and the provision of information on certain matters relating to the child.

No work has been done on how welfare officers actually deal with matrimonial supervision orders. However Millard (1979) indicated the welfare task involved in handling these orders. He stressed the importance for both the worker and the parties "to understand that the need for a supervision order is seen in relation to some specific task which is resolvable over a period of time". The skills involved are described as "traditional counselling skills". The author recommended a process of negotiation when there were access disputes and said that these disputes caused most anxiety for welfare officers. He likened disputes of this kind to one of children quarrelling, and requiring a parent to make rules, and insisted that the worker should refuse to play this role, but rather "confront the parties with the reality of the adult world".

3. The Expertise of Welfare Officers

The expertise involved in welfare officers' training and working practices has been challenged by King (ed. 1981). He states that theories of child development change, and are not based on scientific or medical facts but on values and morals. Accordingly he calls into question the so-called "expertise" of welfare officers. He concludes that when different theories of child development clash in the legal setting, the values of the judiciary will determine whose values are accepted.

These differences in values of welfare officers were apparent in a study conducted in the West Yorkshire area by an Australian Divorce Court Welfare Counsellor. McLoughlin (1980) asked the 200 probation officer participants for their responses to 16 statements taken from the literature on divorce. The first statement was as follows:

> A two-parent home is the only emotional structure in which a child can be happy and healthy.

The number of probation officers who disagreed with this statement was 83.5%. However 12% agreed and 4.5% were undecided. It is likely that the recommendations of officers who agreed with the above statement would differ, in certain circumstances, from the recommendations of the majority of officers.

The replies to another statement reflected differences in the attitudes of some of the participants to visits from the non-custodian parent. The statement read:

> Usually children benefit if they are able to keep in contact with their non-custodian parent (my emphasis).

79% of the officers agreed with this statement and 14% were undecided. The latter were unlikely to take a lot of trouble to establish access when problems arose during the course of a matrimonial supervision order.

There were considerable differences between participants in their responses to the statements, the greatest agreement being 91%, the least 51%, and the average 74.5%. The author could not demonstrate a causal relationship between responses to the questionnaire items and such factors as age, sex and experience of the respondents. He suggested two possible explanations:

1) differences in training produced these differences;

2) newly appointed officers reflected the views of their seniors.

Otherwise, he concluded, the opinions of probation officers were no more valuable in casting some light on the issues surrounding the children of divorce than were those of "the man in the street".

C. THE EFFECT OF DIVORCE ON PARENTS AND CHILDREN

1. The Costs and Benefits of Divorce

A number of studies have demonstrated the adverse effects of divorce on the financial position of the custodian parent, among them the Finer Report (1974), Wynn (1964), Marsden (1969), George and Wilding (1972) and Green (1976). George and Wilding reported that motherless families were not deprived of basic necessities as were some of Marsden's fatherless families. Brunch (1978) remarked that the custodian parent has a heavy burden. She is left with almost the entire financial support burden, and she has to handle the responsibilities of nurturing and caring for her children without reliable assistance from society or the non-custodian parent. The custodian parent becomes less than the ideal parent under these stresses and finds difficulty in maintaining the relationship with the children in her care. Hetherington et al (1976) have documented a striking decrease in the quality of parent-child relationships between the custodian parent and the child one year after the divorce. At the same time, fathers were becoming less nurturant and more detached from their children, ignoring their children more and showing less affection. Wallerstein and Kelly (1975) observed a similar deterioration of the mother-child relationship of pre-school children 1½ years after the separation. However, in their study there was an improved father-child relationship in many cases at this time, although this was insufficient to

forestall a post-divorce downward spiral in the pre-school child.

The pressures in our society not to divorce were discussed by two American writers, Gettleman and Markowitz (1974), who claimed that divorce might be very constructive for partners and children. Wallerstein and Kelly (1980) concluded that there was considerable evidence in their study that divorce was highly beneficial for many of the adults, but they found no comparable evidence regarding the experience of the children.

The broken home has been connected with suicide (Dominion, 1968); personality disorder (Wolff, 1973); delinquency, in the works of West; and poor educational achievement, in the work of Douglas. It has been argued that the pathological factor leading to an increased prevalence of conduct disorders and juvenile delinquency is the turmoil during the marriage rather than the breakup per se (McDermott, 1970 ; Westman et al, 1970; Rutter, 1971; Rosen, 1979). Despert (1953) investigated the records of a clinic for psychologically maladjusted children and found that there were far fewer children of divorce than were found proportionately among the general population. However she discovered that in all cases of disturbed children there was trouble between the parents, although few had experienced divorce. She concluded that marriage may be more destructive to children than divorce, and that unhappy divorced children are only a fraction of unhappy children. Littner (1973) reported that the length of time the child was exposed to marital quarrelling, and the age of the child, were important determinants of the final degree of scarring. The most vulnerable age was 1 to 6 years, and this was particularly so if the child was subject to poor parenting. If the marital disharmony lasted only a few months, then even the most vulnerable child was not seriously damaged, particularly if over 6 years old. If marital disharmony continues longer than a few months, and if the child is vulnerable, then

internalised emotional disturbance may show itself and may not disappear even though the marital problems go away. Littner also considered that the child suffered far more at the hands of parents who feel "locked into" marriage solely because of the child, than if the child is exposed to divorce. One study compared the adjustment of children from intact, unhappy homes with children from broken homes (Nye, 1957). The children in the test were aged 9 to 12 years and were from three Washington high schools (n=780). As a group, the adolescents in broken homes showed less psychosomatic illness, less delinquency and better adjustment to parents than did children in unhappy, unbroken homes. A less optimistic conclusion was reached by Wallerstein and Kelly (1980:307) who concluded that the distribution of healthy and impaired functioning among children and adolescents within the conflicted marriage, when compared to that five years following the marital separation, strongly suggested that the divorced family was neither more or less beneficial or stressful for the children of unhappy marriages. Unfortunately neither unhappy marriage nor divorce are especially congenial for children, they said. Landis (1960) reported that children from ostensibly happy homes, who were unaware of marital conflict, experienced the divorce as more traumatic than children from unhappy homes, and the majority of these children from "happy" homes felt less confident with their peers following the unexpected separation.

The responses of children to the experience of divorce has been investigated by Wallerstein and Kelly (1974; 1975; 1976; 1980), and Kelly and Wallerstein (1976; 1977). They examined 131 children from 60 divorced couples and found that the feelings, behaviour and method of coping of the children were strongly linked to their developmental stage. Many of the pre-school children were bewildered; blamed themselves for the breakup; and retreated into fantasy. By the follow-up one year later, the condition of many of these children had worsened. Many of

the 7 to 8 year olds were immobilised by suffering; vulnerable to regression; and unable to defend themselves. The wish for a reconciliation was widespread. Loyalty conflicts were common, as they were unable to comply with the demand to reject one parent totally and align solely with the other. Boys in particular missed their fathers. The condition of many of these children had improved a year later. Most of the 9 to 10 year olds were angry with one or other parent, or both; immobilised by conflict; fearful and worried. They were called on to take sides in the battle between their parents. Relatively few were able to maintain a good relationship with both parents. Parents frequently turned to adolescents for support, comfort, moral vindication and battle alliances. This group experienced the divorce as extraordinarily painful. By one year later, many had succeeded in disengaging themselves from both parents.

2. Separation and Access

The effects on a child of separation from his or her parents was investigated by Bowlby (1951). He emphasised the necessity for a child of a special relationship with one adult, ideally the mother, and believed that a child who was deprived of this attachment would suffer irreversible damage. The psychoanalysts Goldstein et al (1973) formulated the term "psychological parent" for the person who provided for a child's physical care, nourishment, comfort, affection and stimulation, and whose presence was necessary if the child was to develop a healthy self-esteem. They applied their ideas to children of divorce, and on the supposition that the role of the psychological parent could not be fulfilled by an absent, inactive adult, coupled with the claim that children lack the capacity to maintain positive emotional ties with a number of different individuals unrelated or hostile to each other, they recommended that the decision to allow access to the absent parent should be in the hands of the custodian

parent alone. This recommendation, and the theories on which it is based, have been challenged by experimental researchers in psychology and psychiatry. It is no longer accepted that a child can only form a close relationship with one adult (Rutter, 1972); or that the effects of separation from the children from those close to him or her are irreversible (Clark, A.M. and Clark, A.D. B., 1976); or that the non-custodian parent is not an important figure in the child's life (Wallerstein and Kelly, 1980). The methodology of non-testable theories such as those of Bowlby or Goldstein et al has been convincingly challenged by Morgan (1975). Rutter (1971) claimed that separation from one parent caused no increase in anti-social behaviour, although separation from both parents did have this result. He attributed anti-social behaviour to "bond disruption" rather than to separation per se.

The behaviour of the parties towards each other after the separation, and in particular the access practice, has been associated with anti-social behaviour however. Westman et al (1970) investigated a number of disturbed children (n=153) and found that 15% were from divorced homes. In 2/3rds of these cases there was a post-divorce background of total separation and loss of contact with one parent, usually the father, and in the remaining 1/3rd cases there was evidence of post-divorce turbulent interaction between the divorced couple. McDermott (1970) also investigated disturbed divorced children and concluded that a combination of factors produced the emergence of a typically delinquent pattern: negative images of the absent parent forced on the child; the mother's hostility to her ex-husband transferred to the child; and the child playing the role of the non-custodian parent in the family. Rosen (1979) interviewed 92 children of divorced parents aged between 9 and 28, 6 to 10 years after the divorce, and she reported that children were most distressed by the denigration and criticism of parents by step-parents and vice-versa; the restriction of access to the non-custodian parent by the

custodian parent; and comparison of the child with the absent parent in a derogatory manner. Hetherington et al (1976) undertook a longitudinal study of 48 divorced fathers and their pre-school children, which they matched with a group of pre-school children of 48 intact families. They found that where there was agreement between the ex-spouses in child rearing, a positive attitude towards the spouse and low conflict between the divorced parents, and when the father was emotionally mature, the frequency of the father's contact with the child was associated with more positive mother-child interactions and more positive adjustment of the child. When there was disagreement and inconsistency in attitude towards the child, or conflict and ill-will between the divorced parents, or when the father was poorly adjusted, frequent visitation was associated with poor mother-child functioning and disruptions in the children's behaviour. Benedek and Benedek (1977) found that regular, meaningful access visits minimised or prevented depressive illness, but they also found that access was detrimental to the child when the relationship between the parties was destructive. Parental friction at the time of the visits did not necessarily result in fewer visits, although friendliness between the parents, and the mother's interest in maintaining the father's visits encouraged visiting (Wallerstein and Kelly, 1980:126). The contribution of psychologists & psychiatrists to the understanding of the effects of divorce on children and custody and access situations, and recommendations for handling such cases, has been reviewed by Fine (1980).

Although access is rarely expressly denied by the court, a surprising number of non-custodian parents were found who did not visit. (Maidment, 1976; Eekelaar et al, 1977; Clay and Robinson, 1978). The Oxford study found that in nearly 30% of cases access appeared definitely not to be exercised. Custodian parents were not always particularly enthusiastic about access visits. Clay and Robinson (1978) interviewed

parents with custody about the behaviour and family circumstances of 161 children under 13 at the time of their parents' separations. They found that 43% of custodian parents believed that regular contact should be maintained, while 29% favoured no contact. Wallerstein and Kelly (1980:125) reported similar figures. Approximately half of the custodian parents valued access, while 20% tried to sabotage visits, and the rest had mixed feelings. The complaints of the custodian parents ranged from resentment about money, toys and presents given to the child by the visiting parent when the custodian parent could not be so generous to the child, to complaints about punctuality (George and Wilding, 1970:60). Many writers have observed that children are frequently upset following access (Goode, 1956; George and Wilding, 1972; Wallerstein and Kelly, 1980). In spite of difficulties for the child in coping with access, many considered that the practice ought to be encouraged (Littner, 1973; Watson, 1969; Godfrey, 1975; Benedek et al, 1977; Brunch, 1978; and Freeman, 1979).

The difficulties of non-custodian parents visiting their children included the cost of the visits in terms of time, money and convenience (George and Wilding, 1972:60); the pain at leaving the child at the end of the visits (Hetherington et al, 1976); the obstruction of some custodian parents to visits taking place; and the difficulty of achieving a "real" relationship with the child (Despert, 1953; Goode, 1956). Also Wallerstein and Kelly (1980:127) reported that depressed non-custodian parents found access difficult.

The tendency for access to decrease over time was reported by Despert (1953), Goode (1956), Marsden (1968), George and Wilding (1972) and Hetherington et al (1976). Despert (1953) thought that if the father closely related the young child to the mother, he automatically rejected the one with the other. Only later, when the storm of emotion was

somewhat cleared and practical questions of custody and visitation privileges came up, did the father realise that he had temporarily cut himself off from his own child. Hetherington et al (1976) have provided some information on the relationship between divorced fathers and their children. This study confirmed that contact between the divorced spouse and the child decreased steadily over time; and that fathers became increasingly less available to their children over the course of the two years following divorce. Only 10 of the 48 fathers in the study reported that their relationship with their child had improved and that they were enjoying their interchanges more. Clay and Robinson (1978) found that 35% of the changes in access were the result of a unilateral reduction of contact by the absent parent, whereas access was increased by the absent parent in 7% of cases only. Kelly and Wallerstein (1977) reported that, following counselling, some fathers resumed access after a time, and that more access was taking place 1½ years after divorce proceedings were initiated than had taken place 6 months after the divorce proceedings were started. Wallerstein and Kelly (1980:122) found no correlation between the visiting patterns that had emerged 18 months after the separation, and the predivorce father-child relationship. The quality of the father-child relationship was found to be built on the structure of contact which emerged in the immediate post-divorce period. They emphasised the fragility of the relationship following the separation and the need to provide help for the father to find a role in the child's life, without the structure of home living. Wallerstein and Kelly (1980:238) concluded that the importance of the father-child relationship did not diminish, and may have increased, as the child reached early adolescence. The importance of reaching an agreement about access as soon as possible after the separation, for the sake of the children, has been emphasised by a number of writers (Goldstein et al, 1973; Benians, 1979; and Wallerstein and Kelly, 1980).

Benedek and Benedek (1977) considered that it was unnatural for a child not to want to see the absent parent, and that if the attitude of the child was unjustified therapeutic intervention was needed to attempt to explore and resolve the child's conflict. Wallerstein and Kelly (1980:142) found a few children reluctant to visit their fathers following their intense alignment with an embittered mother at the separation. Usually the reluctance to visit reflected the views of the custodian parent. Children may resist access from a sense of grief and loss expressed as hostility to the absent parent, or from physical or emotional fear of the non-custodian parent (Divorce Court Welfare Report, 1976). Access may be spoilt for a child who is "used" by parents to find out about the life of the other partner (Landis, 1960; Littner, 1973; Wallerstein and Kelly, 1974). The likelihood of being used during access is greater when neither party remarries (Littner, 1973). Both Littner (1973) and Kelly and Wallerstein (1976) considered that there was less need for the child to have access to the non-custodian parent when the custodian parent remarried, and the child accepted the step-parent.

Wallerstein and Kelly (1980:122) recorded the intense desire of children for increased contact with the absent parent, including both children who rarely saw the absent parent and children who were being visited rather frequently. They found that this intense longing for greater contact persisted over many years; that the divorce did not diminish the importance of the psychological link between the father and child; and that an improvement occurred in the adjustment of children who were visited frequently (219). The children were found to prefer flexible arrangements and disliked defined access. Rosen (1979) investigated children's preferences in relation to access and reported that 56 of the 92 children in the study wanted free access. She concluded that there was a strong need in children for such access and agreed with Sanctuary

and Whitehead (1970) that problems of children following divorce could be reduced by freer access. She also discovered that obligated weekend visits did not meet children's needs; it ignored spontaneity and frequently caused severe stress to the child. She also criticised the usual court order for reasonable access which frequently led to abuse, she said, because of insufficient clarity and definition within the legal framework as to what constitutes "reasonable". Johnson (1978) considered that it was unreasonable to expect parents who are bitter enemies to work out reasonable access arrangements without a specific court order.

3. The Welfare Principle

The courts must be guided by the best interest of the child when making decisions about custody and access, but there are no agreed criteria for this welfare principle. The American writer Mnookin (1975) discussed the inadequacy of present-day knowledge about human behaviour to provide a basis for the kind of individualised predictions required by the best interest standard in custody adjudication. Freeman (1980) asks whether the judgement involves the long-term or the short-term interests of the child, and argues that the values of the person making the custody decision affect the choice between competing life-styles and environments. The primacy of values, as distinct from any objective criteria for deciding what is in the best interest of the child, was a central point in the criticism of the expertise of welfare officers by King (1981).

The custody decision is rarely changed, and then generally by agreement between the parties (Wallerstein and Kelly, 1980:182), whereas the access needs of children and parents change over time. The Justice Report (Godfrey, 1975) recommended that on-going guidance and assistance

should be given to parents with the aim of changing their attitudes to one another and removing the conflict from access arrangements. A similar recommendation was made by Maidment (1975) who said that access conditions should be more carefully considered, the initial decision being the best in the circumstances; greater use should be made of supervision orders; and welfare officers should visit the family twice a year. Freeman (1979) suggested the use of welfare officers to administer access arrangements and generally assist the parties. The following year Freeman (1980) recommended the supervision of access as a means of introducing post-divorce counselling and conciliation. Hall (1968) said that the court may give the impression of superficiality and that the gravity of the consequences of disruption for the children should be made clear to parents. The duty of the custodian parent to encourage access was stated in Wood v Wood, The Times, 3rd April 1974. Advice to parents on how to manage access is given in a Code of Practice in the Justice Report (Godfrey, 1975) and in such books as Rowlands (1980).

4. Summary

Custodian parents are often worse off financially as a result of separation and divorce, and this is more likely to occur when the mother has custody of the children. Financial worries may interfere with the quality of parenting provided by the custodian parent. The children appeared to be particularly liable to neglect by the custodian parent one year after the separation, and the support provided by the non-custodian parent may have declined by this time.

Separation and divorce have been linked with an increase in anti-social behaviour and poor educational achievement of the child. The

causal factor may be the turbulence during the marriage rather than the separation per se. Some researchers considered that an improvement might occur among these children after the separation. Others were less optimistic that separation might improve the adjustment of these children.

Most children are distressed and may be disturbed by the chain of events leading up to and resulting from the separation and divorce. The responses of the children appeared to be related to the developmental stage of the child at the time of the separation.

Visits which took place after the separation in turbulent circumstances might be destructive for the child. Frequent visits with the absent parent were considered advantageous for most children and might lessen or prevent the occurrence of anti-social behaviour, provided they could be arranged without conflict and tension between the parents. No access visits by the absent parent might also increase the likelihood of anti-social behaviour in the child.

Often custodian parents did not like access visits, and their complaints ranged from unpunctuality to the distress of the child after the visits. Many researchers found that children were upset and behaved badly after access. Some argued that access was none the less beneficial for the child and ought to be continued.

Non-custodian parents sometimes found access difficult and there was a tendency for visits to lessen over time. It appeared that this may be the decision of the non-custodian parent, rather than the custodian parent, in most cases. The need to provide help for the absent parent to encourage visiting and the importance of reaching agreement on access as soon as possible after the separation was emphasised by many writers.

Children may be reluctant to visit for a number of reasons, including the dislike of the custodian parent of access taking place; their intense alignment with one party; their fear or dislike of the non-custodian parent; and their dislike of being "used" to find out about the other party. On the other hand, many children had an intense desire for greater contact with the absent parent which persisted for many years.

Reasonable access orders have been criticised as too vague, whereas specified access orders were too inflexible.

The welfare principle is difficult to put into practice because of the inadequacy of present-day knowledge to predict probable human behaviour. Recommendations are based on the value judgements of the individuals rather than on any objective criteria.

Access needs of children vary over time, and the access practices should reflect these changes. On-going guidance, assistance and supervision of the non-custodian parent's access practices was recommended.

D. CONCLUSIONS

Conventional legal studies have started with the numbers of orders made by the courts, and the success of these orders in alleviating the problem has been estimated by the number of cases returning to court for further orders. This study starts with disputing couples, and attempts to understand the causes of their disputes and the ways in which the children are affected by them. The appropriateness and effectiveness of the court orders are assessed by the contribution they make to the

alleviation of the stresses between the parties. None of the studies reviewed above have approached these problems in this way.

Some of the data reviewed above overlaps with the data of this research study, for example the work on the types of children orders made by the courts, and the number of welfare reports ordered, and matrimonial supervision orders made. The data in the literature is used to ensure that the findings in the magistrates' court in the city of this research study are comparable with the national figures obtained from the divorce courts, thus enabling tentative, wider conclusions to be drawn. Another area of overlap is in the data on the views and experiences of some parties of the legal and welfare services. The data reviewed largely coincides with the findings of this study and confirms their validity. The research findings of psychologists and psychiatrists on the effects of divorce and access on children is beginning to provide some basis for assessing the assumptions of the courts and welfare services when dealing with children in matrimonial and guardianship proceedings.

No data has yet been published on the operation of matrimonial supervision orders by social workers and probation officers. This information should enable the courts to see the effect of their orders, and the welfare agencies to assess the work of their officers when these orders are in force.

A number of hypotheses are tested in this research study: access disputes are related to the marriage and the breakup, rather than the access practices per se; children orders in undisputed custody and access cases are irrelevant; the courts are much more concerned when granting custody to fathers than to mothers; when the principle of access is opposed by the custodian parent an access order does not enable the

non-custodian parent to see the child; supervision orders may be helpful in alleviating stresses between parties and facilitating access, but not all social workers and probation officers have the inclination and ability to do this work.

The validity of these hypotheses will be examined in the final chapter of this study.

CHAPTER 4 : SEPARATED PARENTS: THE HISTORY OF THE SEPARATIONS AND DIVORCES

A. DATA

Interviews took place with 28 parents (12 women and 16 men), including one man who had been divorced twice, and 2 couples. The data therefore covered 27 relationships most of which ended in divorce. The methods by which these parties were recruited were described in Chapter 1. The material collected and presented in this chapter includes factual information on the marriage patterns, the separations and divorces, and the post-separation arrangements, and also the views of the parties on the effects of the separation on themselves and the children.

The parents were divided into two groups depending on whether the relationship appeared to be over for both parties at the separation or not. Group A consisted of 14 parties whose relationship had some life in it for one party at the time of the separation. This group included the only case in which the parties had not been married to each other. However they had co-habited for over 12 years. In group B, there were 14 parties whose relationship was over for both parties at the separation. There were 7 men and 7 women, including 2 former couples and one man who was divorced twice. Group B therefore covered 13 relationships.

In 4 cases in group A, the men agreed to the separations initiated by their wives. Nevertheless it was considered that these 4 relationships still had some life in them. In one of these cases, the woman was still very attached to her husband at the time of the interview, and it is doubtful that this marriage had broken down irretrievably at the time of the divorce. In the second case, although the woman

initiated the separation, she clearly remained very attached to her husband, and had not wanted him to leave. One woman approached her ex-husband later for a reconciliation, and when this was unsuccessful she blamed the man's new partner for the breakdown of the marriage. Finally one woman appeared to want the marriage to continue as she had always allowed her husband to return home after numerous separations. On the last occasion the man decided to remain away. It was clear that none of these women felt that their marriages were over at the time of the separation.

In group B, there was agreement to separate in all but 4 cases which were initiated by the women. In 3 cases the men remained in the matrimonial home, although they agreed that the relationship was over. One man moved out when a financial settlement was arranged regarding the house, and 2 men stayed in the home with the children, and the women had to move out. In the last case the husband wanted to bring up his child who had not been born at the time his wife left home. In none of these cases did there appear to be any emotional relationship between the parties at the time of the separation.

B. THE MARRIAGE PATTERNS

Only 11 of the 54 parties were under 21 at the time of the marriages, and 12 were over 27. It was curious to find that in only one case where one party was under 21 did disputes occur after the breakdown, whereas disputes occurred in 9 cases in which at least one party was 27+ when the marriage took place. There was very little difference between the length of the marriages of the 2 groups. However many more violent outbursts were recorded between the parties in group A (13/14), than in group B (5/13). There was a history of violence throughout the marriage in 4 cases.

In group A, there were 21 children ranging in ages up to 13 years, and with an average age of 6½ years at the separation. The family patterns were 1 or 2 children in every case. Group B contained 31 children ranging in ages up to 16 years, and with an average age of 7½ years at the separations. The sizes of these families varied between 1 and 6 children. Thus the children of the relationships in group A, where one party did not want the separation, were slightly younger on average than the children in group B, where both parties wanted the separation.

Most of the parties interviewed were from social classes 2 or 3[1] (23), and only 4 were from either social classes 4 or 5.[2]

C. THE SEPARATIONS AND DIVORCES

Separations	A	B	Total	Divorces	A	B	Total
Initiated by women	11	7	18	Women petitioners	10	5	15
Initiated by men	3	1	4	Men petitioners	2	5	7
Both parties agreed	0	5	5	Petitioner N/K	0	1	1
Total	14	13	27	Total	12	11	23

Magistrate Court Orders				No Divorces			
	A	B	Total		A	B	Total
	7	2	9		2	2	4

In the majority of cases the women initiated the separations and petitioned for divorces.[3] Of the 27 relationships investigated, 23 divorces had taken place at the time of the interviews. Magistrates' Court

1. Registrar General's classification
2. For further details of the marriage patterns, see appendix A.
3. Wallerstein and Kelly (1980) found that women took the final step to terminate their marriage in 3 out of 4 cases. Government statistics show that about 2 out of 3 petitioners for divorces in 1980 were women (OPCS Monitor FM 2 82/1).

Orders had been made in 3 of the 4 cases in which no divorce had taken place and in 6 cases preceding divorce.
The divorce hearing was pending in 1 case; the parties were Roman Catholics and did not intend to divorce in another case; and in the third case the parties were not married. One separated couple did not contemplate re-marriage, and decided to make their own arrangements outside the courts.[4]

D. POST-SEPARATIONS ARRANGEMENTS

1. Custody Arrangements of Interviewed Parents

Women	A	B	Total	Men	A	B	Total
Sole Custody	4	5	9	Sole Custody	2	3	5
Non-custodian	0	1	1	Non-custodian	7	4	11
Children divided	1	1	2	Children divided	0	0	0
Total	5	7	12	Total	9	7	16

In group A in which one party wanted the marriages to continue, the children were in the sole custody of their mothers in 11 cases; the sole custody of their fathers in 2 cases; and divided between the parents in 1 case. In group B in which both parties wanted the marriages to end, the children were in the sole custody of their mothers in 8 cases; the sole custody of their fathers in 4 cases; and divided between the parents in 1 case.[5]

With 2 exceptions, the parents agreed on the custody arrangements,

4. For further details of the divorces see appendix B.
5. The apparent discrepancy in these figures arises from the fact that both parties were interviewed in 2 cases, and one man had divorced twice.

and these were approved by the courts. Other research has shown that most of the arrangements for children are made by parents and endorsed by the courts (Eekelaar et al, 1977; Maidment, 1976).

Custody was contested in 2 cases and welfare reports prepared. In the first case, the woman agreed to allow the father to have custody of his 2 year old boy, while she kept the other children who were not his. However when the father denied the mother access to the boy and made a variety of ad hoc arrangements for his care, the mother applied to the court for custody. A hearing was arranged, and while the welfare report was being prepared the woman "kidnapped" the child. She allowed the father regular access to the child, and the court awarded her custody.

The second contested custody case involved 3 children. The custody hearing took place after the divorce, and the woman agreed to allow her husband to petition for divorce under the old law, on the ground of her adultery. Her understanding was that if she allowed him to petition for divorce, he would not contest custody, but the man broke this agreement and contested custody. Between the time of the separation and the custody hearing, the children had lived for a time with each parent. They were living with their mother during the week and spending weekends with their father at the time of the hearing. Following the surprise announcement by the father a week before the custody hearing that he intended to remarry, the woman's solicitor advised her that as both homes were satisfactory she could lose all the children unless she came to an agreement with her husband to divide the children. Against her better judgement, the woman agreed to have custody of the 2 older children, while the youngest child, a girl of 6, was to live with the father. His new partner had young children, and the mother felt that the younger child would fit in more easily with this family than either or both of the

older children. The court agreed to these proposals. Years later the mother still felt that the children should never have been divided.

The first contested custody case is an example of the circumstances in which the court is prepared to grant custody to a parent who has kidnapped a child. The second case raises doubts about whether agreements reached by solicitors at the eleventh hour, to avoid adjudication by a judge, are the best way to arrange the future of children.

2. Access

The court ordered reasonable access to the non-custodian parent when the initial order was made in all but 5 cases. No order for access was made in 2 cases, both involving allegations of ill-treatment. Access was defined in 3 cases, including one case in which there were no disagreements. The father was given custody of 2 young children, and it may be that the judge was prompted to make this order to encourage the mother to visit the children. This was the only case in which access was defined when the initial order was made or an order varied, when there was no access dispute.

Welfare reports were prepared and matrimonial supervision orders made in 3 cases when the initial orders were made. The purposes of these orders appeared to be both to support the custodian parents and to investigate or facilitate access.

Access was actually taking place at the time of the interviews in 9 of the 14 cases in group A, and in all cases in group B.[6] Overnight staying access was taking place in 15 of the 27 cases, but mainly among

6. For further details of the access practices in all cases, see appendix C.

the parents in group B who had both accepted that the marriage was over. The most usual place for access to take place was at the home of the non-custodian parent (18/27), and the majority of cases were also from group B (12/13). Only one case was recorded in which access took place at the home of the custodian parent. The absent parent lived in another part of the North, and the custodian mother, who disliked access taking place, remained with the child throughout the visits.

Frequent visits of once a week or more took place in 9 cases, and fortnightly visits in 5 cases. Three parents visited occasionally and only one of these wanted more frequent access. Distance limited the frequency of visits in a few cases.

In general the frequency of access and the place where visits took place depended on the wishes of the non-custodian parent.[7] However 5 custodian parents refused to permit any access, and in one case where the 2 children were divided both children refused to visit the absent parent. The non-custodian parents interviewed did not include any who had reduced or stopped their visits over time. This was not surprising as such parents were unlikely to volunteer to be interviewed.

3. Matrimonial Home

In group A there was agreement on who should remain in the matrimonial home in every case, but there were disputes in 2 cases over the

7. Clay and Robinson (1978) found that while 43% of access arrangements remained constant over time, 35% were reduced unilaterally by the absent parent. However in McGregor et al (1970), the husbands reported that the overwhelming consideration as to whether there were access difficulties was the wives' attitude to visits. Presumably one group of men wanted access, while the other groups were not so keen. The only source of information on why men decide not to visit is contained in a few interviews conducted by Murch (1980).

disposal of the home. The custodian parent remained in the matrimonial home in 5 cases, and moved out in 9 cases.

In group B there was also agreement on who should remain in the matrimonial home in every case. However in 2 cases dissatisfaction was expressed regarding the disposal of the home. The custodian parent remained in the home with the children in 9 cases, and 5 of them bought out the other party. In 2 cases the non-custodian parent remained in the home, and the mother and children moved out.

At first sight it was surprising to find that the custodian parent moved out of the matrimonial home in 11 of the 27 cases. However only 2 non-custodian parents remained in owner-occupied homes, and the custodian parent was re-housed in both cases, either by her parents or her future spouse. One custodian parent appeared to have been wrongly advised that the court would require her to sell her home.[8]

4. Maintenance

The court ordered maintenance for 9 wives in group A. Three of the men paid willingly, but 6 men were reluctant to pay, including 2 after short marriages of less than 5 years. Maintenance for the children was ordered in 13 of the 14 cases, including payments by one non-custodian mother. These payments were paid willingly in 9 cases, and unwillingly in 4 cases. There were 5 cases in which there were disputes over both maintenance and access. In one case maintenance was withheld in order to try to get access established, and possibly one other case fell into this category. In none of the other cases was there a link between the access and maintenance disputes. Also access was never denied by the custodian parent in order to try to get maintenance paid, and in 5 cases in which

8. For details of these cases, see appendix D.

there were access disputes maintenance was paid willingly.

In group B maintenance was ordered for 5 women, and was paid willingly to 3, but reluctantly to 2 women after short marriages. The maintenance for the children was paid willingly in all but 1 case, and custody had been disputed in this case. One father withheld the children's maintenance for six months when he thought that his ex-wife was preventing his children from visiting. This was the only case in this group in which there was a connection between defaulting on maintenance and access problems. There was one case in which the parties went to court for a maintenance order because it was the only way to get their tax problems sorted out. No maintenance was paid to the 5 custodian fathers, nor to 13 of the 27 ex-wives.[9]

E. THE EFFECTS OF THE SEPARATIONS ON THE PARTIES AND THE CHILDREN

1. The Parties

There appeared to be 2 phases in the adjustment of parents. The first phase was one of adjustment to the separation itself, while the second involved the setting up of a "new life". By this is meant making new friends and relationships, and building a new structure for their lives in their new roles of separated parents.

In group A, in which one party wanted the marriage to continue, 3 of the women interviewed had adjusted to the separation and were settled in their lives, but 2 women reported that their lives were not satisfactory. One woman adjusted quickly to the separation and felt settled in herself, but she complained that her ex-husband still "controlled" her

9. For details of the maintenance see appendix E.

by using access to find out about her life and restrict her activities. This woman had not remarried. The other woman married shortly after the divorce, but still felt attached to her first husband.

Four of the men in this first group had settled with a new partner, and they reported that they were contented with their lives. This included one man who did not initiate the separation, nor did he agree that the marriage was over at the time. One other man had settled but was not with a new partner. Four men, who had not wanted the marriages to end, had not adjusted to the separations, nor were any of them with new partners. Three were not seeing their children, and had access cases pending in the courts.

The parties in group B had all adjusted to the breakup, and many of them had made a new life. Although all the parties had wanted the marriages to end, 2 women were very upset when their husbands actually moved out, and 3 parties attempted reconciliations.

It appeared that the longer the time since the separations, the more likelihood there was that the parties would have adjusted to the separation and settled down in their lives. However one woman and 2 men who had been separated for over 5 years had still not settled, and were dissatisfied with their lives.[10]

The standard of living of the custodian mothers interviewed, all from social classes 2 or 3, dropped to social security level in 7 cases, and remained more or less the same as during their marriages in

10. Wallerstein and Kelly (1980) found that 5 years after the divorce, 2 out of 3 men and slightly more than 1 in 2 of the women viewed the divorce as beneficial, feeling it had enhanced the quality of their lives.

4 cases. Two of these women had well-paid employment, one was helped financially by her parents, and one remarried shortly after the divorce.

The 6 non-custodian fathers[11] from classes 2 or 3 who were interviewed claimed that their ex-wives' standard of living remained more or less the same as it had been during the marriage except for one woman, whose standard dropped to social security level. Two wives were paid considerable maintenance, one was in a well-paid job, and 3 remarried shortly after the divorce. The 4 non-custodian men from classes 4 or 5 interviewed, did not know whether their ex-wives were working or not. These women would probably have been in poorly paid employment had they been working, so their standards of living were likely to be around social security levels.

The 5 custodian fathers interviewed, all from social classes 2 or 3, lived at approximately the same standard of living as during their marriages.[12] Only one non-custodian father reported that his standard of living dropped following the divorce, as he paid his ex-wife a large amount of maintenance. These payments ceased when she remarried. The one non-custodian mother interviewed claimed that her standard of living had dropped to social security level following the separation.

11. This included one man who reported on his two ex-wives.

12. George and Wilding (1972) reported that motherless families were not deprived of basic necessities as were some of the fatherless families investigated by Marsden (1969). Although custodian fathers were worse off in some cases, very few fathers were found to be at or below S.B. levels. Wallerstein and Kelly (1980) reported that among the wealthiest and the lowest socio-economic groups, there was not much change in the standard of living as a result of divorce. McGregor et al (1970) concluded that the financial problems of mothers following separation in the magistrates' court, were caused not by the reluctance of men to provide maintenance, but because their incomes were too low to provide adequately for both their lawful wives and for themselves, whether living singly or with another woman.

2. The Children

In group A, 3 parents reported that their children were upset by the quarrels prior to the separation. Two of these children were known to have settled afterwards, but the condition of the child in the third family was not known.

Five parents in group A reported some degree of disturbed behaviour following the breakup. One mother said that her ten-month-old baby regressed when the father left. One girl was being treated by a psychiatrist for a bowel complaint. This child was 1 year old at the breakup, and was having problems at the time of the interview, 6 years later. One boy who was aged 2 at the breakup had temper tantrums for the next five years, but gradually settled 3 years after his mother's remarriage. Another boy, who was 4 at the breakup, suffered from depression and was in a very bad state at the age of 9. He was worried about his mother, who lived alone at the time, and he took the responsibility for her welfare on himself. A psychiatrist advised a change of custody, and the boy improved when he went to live with his mother. One father reported that, according to his ex-wife, their son aged 5 at the separation started bedwetting after access visits. The man was sceptical and thought the mother had invented this story to have a reason to deny him access to his son.

No ill-effects on the children were reported by 3 non-custodian fathers, 2 custodian mothers and 1 custodian father in group A. Four non-custodian parents had not seen the child/ren since the separations and could not comment on the children's condition.

In group B, 5 parties reported that their children were upset

by rows before the separation, and 8 claimed that there was some degree of distress after the separation. One woman reported that a boy of 2 had been badly spoiled by his father during the marriage, and was upset because he wanted to remain with his father, but the court ordered custody to the mother. Another woman reported that her 3 children got very confused about where they were living during a period when these children were living with one parent during the week and the other each weekend. The children were aged 13, 11 and 6 at the separation. The boy who was 11 at the separation was still insecure 9 years later, the mother said. A third woman reported that her daughter, who was born after the separation, had problems when she started school, as she disliked children's company, and preferred to be with adults. The mother said that the child improved, and by age 7 she was a happy child doing well at school. Three cases were reported in which the child became very difficult to manage after the separation. Two were boys aged 3 and 4 at the separation, and the other was a girl of 6. All these children settled within a couple of years. One girl who was 3 at the separation stopped visiting her father for a while, and he said he thought she became upset because she found him too stern. In the last case both parents were interviewed, and a "Freudian" account of the children's difficulties was given by both parties. The man reported that his daughter aged 6 at the separation became very possessive with him. The mother said this child was very upset by the breakup, and regressed. Whenever she brought a man into the house, this girl made a great fuss of him. The woman reported that the boy who was 8 at the separation understood a lot more about the marital difficulties than either of the parents had suspected. She considered that he was affected before the breakdown, but settled afterwards, and was not unhappy to see his father leave, as he wished to take his place. He objected strongly to his mother bringing home any men friends. The man in this case considered that the tension before the breakup had made them

both less attentive to the needs of their children.

There was one family of 6 children, most of whom were in trouble of one kind or another. However their difficulties did not appear to stem from the breakup, but could have been related to their parents' difficult relationship throughout the marriage.

In all cases where there was a history of violence during the marriages, the children were disturbed. There was no apparent relationship between the occurrence of occasional violent outbursts between the parties and disturbances in the children. No violence had occurred in 7 of the cases in which children were disturbed after the breakup, and the children were not disturbed in 4 cases in which outbursts had occurred.

Disputes between the parties took place after the separation in 5 cases in which children were disturbed. In all, 21 of the 52 children were reported to be disturbed in some degree, and young children of 5 or under appeared to have been much more vulnerable to disturbance after the separation than older children. All the children of 5 and under, whose mothers were living at social security level, were affected by the breakup. However about half of the children of this age at the separation were reported to have survived the breakup without adverse effects. In the next chapter, when the behaviour of the parties after the separations is discussed, the connection between disputes and the occurrence of behavioural disturbances in the children will be explored.

F. DISCUSSION

Some differences were observed between the parties in group A, one of whom did not want the marriage to end, and the parties in group B,

in which both parties considered the relationship to be over at the separation.

The marriage patterns were similar, with the exception of the occurrence of violent outbursts, which were much more frequent in group A. Presumably frustrations and tensions overflow when one party is reluctant to end the relationship.

The separations and divorces were also similar. None of the parties objected to the use of the particular fact cited in their divorces under the Matrimonial Causes Act (MCA) 1973, and no differences were noted between the parties divorced under the old or the new law.

The two groups differed with regard to access and to the parties' adjustment in the post-separation period.

Overnight staying access was rare among the parties in group A, but took place in all but one case from group B. Access took place in the home of the non-custodian parent in approximately half of the cases in group A, and in all but one case in group B. Among the parties in group A, visits took place once a fortnight or more in 4 cases, but never more than once a week, whereas in group B visits were once a fortnight or more in 10 of the 13 cases, and more often than once a week in 3 cases. Six non-custodian parents in group A were not getting any access to at least one child. The custodian parent refused to allow visits in all but one case when the children refused to visit, and children were reported to have refused to see the absent parent in 3 other cases. Access was taking place in every case in group B. Thus there were very marked differences between the two groups in the access practice at the time of the interviews.

Six of the parties interviewed from group A reported that they had not adjusted to the separation, 2 women and 4 men, including 3 men who were unable to see their children. The other parties from this group reported that they had settled down either with or without a new partner. All the parties in group B had adjusted to the separation, and most of them were happy with their lives.

The longer the time since the separation, the more likelihood there was that the parties had adjusted. However one woman and 2 men, who had been separated for over 5 years, had still not settled and were discontented with their lives.

Other findings reported in this chapter occurred among the parties in both groups.

Men were unwilling to pay maintenance in 6 cases when they considered they had been treated unjustly by the courts: one man objected to paying for his child after he lost the contested custody case; 4 men objected to paying maintenance to their ex-wives after short marriages; and one man objected to paying maintenance to his ex-wife after she left the children, and was awarded a half-share in the proceeds of the sale of the matrimonial home.

Maintenance disputes were linked to access disputes in only 2 or possibly 3 cases, and there were no cases in which access was refused because of a failure to pay maintenance.

The custodian parent moved out of the matrimonial home in 11 cases, but in only 2 cases did the non-custodian parent remain in the owner-occupied matrimonial home, and in both cases the custodian parent

was re-housed, either by her parents or her future spouse. One non-custodian mother saw an advantage in terms of her children's availability for access in her ex-husband's reluctance to move away from the area because of the claim she might have on the proceeds of sale of the matrimonial home. Other custodian parents would have preferred to move out of the matrimonial home into cheaper accommodation, but were afraid to do so for the same reason.

The standard of living of the custodian mothers interviewed dropped to social security level or thereabouts in 7 cases, whereas none of the custodian fathers reported any change in their living standards. Only one non-custodian father reported a temporary lowering of his living standard until his ex-wife remarried, while the only non-custodian mother reported that her income dropped to social security level. Large scale studies have reported similar differences in the incomes of motherless and fatherless families (Marsden, 1969; George and Wilding, 1972; The Finer Report, 1974).

There appeared to be some relationship between variables, although no firm conclusions could be drawn because of the size and unrepresentative nature of the parties interviewed.

Children may possibly be more vulnerable to behavioural problems in certain circumstances. Children of 5 years or less at the separation were disturbed more often than older children of the interviewees, although about half of the children of this age were reported to have shown no adverse responses to the separations. The children of this age, whose mothers were living at social security level, were all affected; possibly financial difficulties contributed to poor parenting. Children were affected in each of the 4 cases in which there was a history of violence during the marriage. When disagreements between the parties

occurred in the early years of the marriage, the children had behaviour problems during or after the separation in 8 of the 9 cases reported.[13]

There appeared to be some relationship between the occurrence of disputes after the separation and the age of the parties when the marriages took place. Disputes occurred among 9 of the 12 parties who were 27 or over at the marriage but only in 1 of the 11 cases where one party was 21 or under. However all 4 of the interviewees from either classes 4 or 5 were 26+ at the time of the marriage, and disputes occurred after the separation in every case. Violent outbursts also occurred in every case from social classes 4 and 5, but also among 13 of the 23 parties from social classes 2 and 3.

The most important findings reported in this chapter were the relationship between the infrequency of access and the reluctance of one party to end the marriage; the resentment of the maintenance order when it was considered unjust; and the possible circumstances in which children appeared to be more vulnerable to disturbances before and after the separation.

13. Rutter (1971) suggested that it might be the discord and disharmony during the marriage, rather than the breakup of the family, that led to anti-social behaviour in divorced children.

CHAPTER 5 : SEPARATED PARENTS - PROBLEMS AFTER THE SEPARATION

In the last chapter, the parents were divided into two groups, depending on whether the relationship was alive for one party at the separation (group A), or ended for both (group B). In this chapter, the behaviour of the parties will be examined and their views compiled on the legal system, and the separation and its aftermath. An assessment will be made of the legal facilities available to alleviate the problems of separated parents and their children.

A. THE BEHAVIOUR OF THE PARTIES IN GROUP A.

The behaviour of the parties in group A fell into three broad categories:

1) The unwilling party to the breakup tried to retain contact with the marriage partner;
2) The unwilling party to the breakup punished the former partner through the children;
3) The custodian parent who wanted the breakup tried to make a complete break with the former marriage partner.

The problems that arose will be described under these three headings.

1. One Party Attempting to Retain Contact with the Marriage Partner

Two of the custodian mothers interviewed fell into this category, and two non-custodian parents, one man and one woman, were reported by their ex-spouses to have tried to resurrect the marriages. There was one case in which neither party appeared to want the marriage to end. The material from the interview with this woman has been included in this group, although

the case was untypical in certain respects. Excluding this last case, the marriages were relatively short, the longest being 6 years, and the children were under school age at the breakup. Access gave rise to disagreements in every case, and appears to have been used by the party who wanted to hang on to the marriage, as a means of retaining contact with his or her ex-partner.

(i) The custodian mother described the access to her 4 year old son immediately after the separation:

> Whenever (the child) wanted to see his daddy, we would drive over to see him. This would be 2-3 times a week sometimes. Also at weekends and at all sorts of odd times. I did miss my husband, and I didn't know anyone, so I was very lonely and glad to see him.

Later the woman put pressure on her ex-husband to visit regularly once a week, and threatened to stop all access otherwise. The man wanted to see his child, and agreement was reached out of court on the extent of access. There were no other disputes in this case, and no welfare officer involvement. The child's behavioural problems did not appear to stem from the disagreements between the parties after the breakup.

(ii) This woman appeared to have tried to establish access as a means of seeing her ex-husband. She certainly was very distressed when he remarried:

> I got the newspapers and read about it, and went into a form of shock. My friend and her husband took me to a party that night. The whole time I just stood looking at people, and the only thing I could talk about was my ex-husband and his new wife.

She told her ex-husband that their 10 month old baby missed him, and was regressing, but he refused to accept that this could be so. Visits were arranged after a gap of three years. The mother had shown the child

photos of her father, and the child was anxious to meet him, she said. The mother was not satisfied when the access took place. She gave two reasons: the child was taken away from home by her father whom she did not know; and during the access time, the man visited clients on business, and took the child along. The mother refused to allow any further access, and the man went to court and applied for custody. An interim access order was made defining access for times outside business hours, and a custody report was ordered. The reporting officer recommended the continuation of the status quo regarding both custody and access, but the man withdrew the case when he saw the report, and no further court cases over custody or access took place. Access took place for short periods over the years, but it was always the child who arranged for the visits to recommence.

Maintenance for both the woman and child was paid reluctantly, and frequently the man paid at the last minute, when threatened with court action. The court hearing in this case did nothing to ease the situation between the parents. The child's disturbance appeared to result from the efforts of the custodian mother to establish access, and the disinterest of the father.

Both the women in (i) and (ii) above described themselves as "obsessed" with their partners at the time of the marriages, and both considered, in retrospect, that they had not "grown up" when they married. It took them about 4 years to adjust to the ending of their marriages.

(iii) This woman reported that her ex-husband constantly "harassed" her with letters and cuttings from articles and so on. He was reported to have said that he would never remarry, as he could not hope to find another woman to take her place. Their baby was born after the separation, and

access took place occasionally over the next 7 years. The woman had another child of 7 when she married this man, and she alleged that her husband blamed this child for the failure of the marriage, and over the years tried to drive a wedge between the two children. The woman stopped all access, and her ex-husband took her to court. A welfare report was prepared, recommending that access should take place, partly to provide a male figure in the child's life.[1] An order was made that the father was to have the child for staying access over the weekend at intervals.

> The first time I thought that I would have a nervous breakdown. I had to get the doctor, and that was it as far as I was concerned... The probation officer tried to persuade me to allow access, and I tried. But it was no good ... I told him that we would not be in when he called ... A second access hearing took place thirteen months later. Another report was prepared by the probation officer, and she reported that there was still no other male around, and recommended access again. The court made another compromise order, defining access. The probation officer tried to persuade me to implement the order but I said that I would not, and that I did not have to talk to her. I can't do something that I think is bad for the child ... I can't explain why it was wrong, but I know it was wrong. He was doing his best to break up my unit, and it was essential that the girls should remain friends.

The woman refused to obey the access order, in spite of a fine by the court. She phoned the Court Clerk and explained to him that it was an impossible situation when the court were asking her to do something that she considered to be quite wrong for the child. She did not hear anything more from the court. Her ex-husband wrote and said that he would not pursue the matter any further. This man was also reluctant to pay

1. See the woman's objection to the suggestion of homosexuality, which she read into the report, on p 118.

maintenance for his ex-wife and the child who was not his own, as the marriage had been very short. The court and welfare officers were unsuccessful in changing this woman's mind about the inadvisability of access. No behaviour problem in the child was reported by the mother.

(iv) One custodian father reported that his wife ended the marriage when she was cited as co-respondent in a divorce case under the old law, and she left to live with the man concerned. Some time later she returned and asked to see the children, aged 1 and 4, and attempted a reconciliation. By this time the husband had met another woman and decided he did not want the marriage to continue. The woman was reported to have blamed her ex-husband's girlfriend for breaking up the marriage, and to have told the children that this was so. Access was used by both women to irritate each other, and to argue through the children.

> We used to do stupid things. I like little girls to look like little girls at a certain age. At 3 I would put up the hem of the child's dress, and when she went away, her mother would let it down, and I would sew it up again. It was stupid little things, and it was all so silly. Their mother would say that if it wasn't for me, we would still be a family. Then I would say that it was not like that at all, and I would tell them what really happened. So then they would get another version of what happened. So we were quarrelling through the children. It seems awful now ... But we thought that we had been very civilised and that, generally speaking, although there was animosity, we were covering it up, and that the children were not aware of it.

One of the children, a boy who was 4 at the breakup, had to have psychiatric treatment when he was 9-10 years old. He worried about his mother, who

was alone at that time, and clearly he was more aware of the friction between the parties than any of them realised at the time. The psychiatrist made the parties realise how their behaviour was affecting this child, and recommended a change of custody, with very frequent access. This was agreed and the child's condition improved. There were no court hearings over access or any other matter, and no welfare officer involvement.

(v) The last case in this category was the one in which it seemed doubtful that there was irretrievable breakdown of the marriage. During the marriage, this woman had frequent rows with her husband because of his infidelities, and she was very upset that he went to live with his latest girlfriend when she told him to leave. The woman described how she saw her ex-husband on numerous occasions after the separation, and claimed that they got on well together. She remarried 6 months after the divorce, and all her ex-husband's friendliness disappeared. The remarriage appeared to have been a bitter blow to him, as it ended the possibility of his return. Deadlock between the parents and children resulted. The woman and her daughter aged 13 blamed the ex-husband for changing. The girl visited her father for some time, but eventually she stopped and said that he had changed, and that she disliked his girlfriend. The man believed that his ex-wife discouraged access, but this was not so. In fact the mother wanted her daughter to visit, so that she could find out about his life. The following conversation took place during the interview:

Daughter: I suppose it is natural that my mother is interested in what he he has been doing and where he has been for his holidays, and things like that. But I just don't want to know the answers. I just don't like going up and asking all these questions. I just feel that I am not part of his life, and so I don't need to know about it.

Mother: I suppose (the daughter) accepts things and I don't. I have known him all these years, and it still seems funny to me that it

has all gone now. I envy her that she can do this. I just can't shut myself off completely.

The man and his son aged 11 blamed the woman for ending the marriage. The boy used to call to see his mother for about 5-10 minutes at intervals of about 2 months. These children had never got on well together and were quite happy to live apart. No court hearing on access or any other matter took place, and there was no welfare officer involvement.

The possibility that a reconciliation might have been achieved in this case was not perceived by the divorce court. The inability of the parties to realise how badly they had hurt each other contributed to the tragic situation which resulted, with each party losing contact with one child, as well as with their ex-spouse.

2. The Unwilling Party Punished the Marriage Partner

Unlike the last category, the unwilling partners to the ending of the marriages appeared to respond by trying to hurt or punish their ex-partners, using the children to do so. There were 3 non-custodian fathers and 1 custodian mother in this category. These marriages were longer than those in the last category, 2 being of 10 years duration, and the shortest being 6 years. The children tended to be older, only 2 being under school age at the separation, and all the others being over 10 years old.

(i) One non-custodian father was not allowed to tell his daughter, who was 2 years old at the separation, that he was her father. He agreed to this demand because he felt very guilty about leaving his ex-wife and young child. The woman was very angry and bitter when this man left, and she

thought that he had been lured away by another woman, whom he subsequently married. There were constant rows about access, particularly in the presence of the new wife, and staying access was not permitted. The man remarked that what was behind the difficulties over the access was the desire of his ex-wife to punish him. At one stage he took out a summons to try to get access defined. However the solicitors came to an agreement, and fixed visiting times. Over the 3-4 years since the separation, the man has gradually won concessions over the frequency of access and the length of time he could spend with his child. He hoped to get staying access eventually. The child was not reported to have shown any signs of disturbance.

(ii) This man's marriage had been a long and stormy one, with many temporary separations. The woman had been prepared to allow her husband to return after each break, and may have been bitter when he did not return on the last occasion. The man reported that she was unsure of herself, and felt herself to be very inferior to him intellectually. During his absences there were difficulties over access. Between the divorce decree nisi and the decree absolute the woman told her ex-husband that he could look after the children, who were 18 and 16, and left the home and the children. This man worked some distance from the matrimonial home, and he had major difficulties looking after the children and getting to work. Also he had started a relationship, and he concluded that his ex-wife had made these domestic problems for him in order to hamper its development. The children were old enough to visit their mother as often as they wished.

There were disputes over both maintenance and the disposal of the matrimonial home. The man objected to having to pay maintenance to his ex-wife when she left the children, as he had to undertake the financial

burden of running two homes for a time. Later the matrimonial home was sold and the Registrar ordered that the woman should be given her share of the proceeds. The man was very angry about this, as he felt that his share was insufficient to provide himself and the children with suitable alternative accommodation, when he had maintenance commitments to his ex-wife as well. Also he and his ex-wife had made an agreement about the property through their solicitors, which the Registrar overruled. There was no social worker or probation officer involvement in this case. The children were aware of the disputes between their parents during the marriage and at one time the daughter took her mother's side against her father. However a cordial relationship was re-established after a short time.

(iii) This marriage was also long and unhappy, especially for the woman. She was very bitter when her husband left her for another woman. She was a foreigner and may have felt insecure at the prospect of living alone with her daughter. Certainly she was reluctant to end the marriage. The man considered that she was unbalanced mentally, and a compulsive liar. At the time of the interview the divorce decree nisi had been granted, but none of the disputed matters had been resolved. No access was taking place, and the 10 year old girl told her father on the telephone that she was not prepared to see him. The amount of maintenance to be paid and the disposal of the matrimonial home were also unresolved. Welfare reports had been prepared and a matrimonial supervision order made, whose purpose appeared to be to facilitate access, as well as to reduce the temperature between the parties.

This man complained about the probation officers he had encountered:

Before the hearing I phoned the welfare officer and asked if she had sent the report to the court. She said no, and when I told her that the hearing was today, she said that nobody had told her. She said she would come along and give oral evidence.

As far as the access is concerned I do not know what is going to happen there. As far as the welfare people are concerned, I must have pestered them on numerous occasions, but there is no reaction there. I phoned the officer who was originially involved and asked what was happening about the matrimonial supervision order. She said the case was going to be transferred to another officer, and the new people had not got the details yet. Well, that was over 10 days ago, and nothing has happened yet. Every time I have had to chase them. No one has ever been in touch with me. So I am left completely in the dark. Nobody seems to care. I don't know what will happen in the future as regards access - whether it can be re-established or whether it is going to be a case of me having to leave things as they are.

This man felt that the longer it was before action was taken to re-establish his access, the less likelihood there was that it would ever be resumed. He was therefore very impatient about delays. This child was reported to have sided with her mother against her father, and to have been a normal, happy child in spite of the disputes between her parents during the marriage.

(iv) The custodian mother reported that the behaviour of her husband had been a source of conflict during the marriage. He was a compulsive gambler, who worked sporadically, sold the household goods, and borrowed money from his wife's relatives on various pretexts to indulge his obsession. The child was 6 months old at the separation. Access was arranged by agreement between the solicitors:

> Two solicitors decided that he should have access, and they decided the amount between them. He used to come for her at 10.00 a.m. and take her away until 5.00 p.m. in the afternoon. It was ludicrous - she was 13 months old. He did not know what to do with her. His parents were working, and he did not have a car at that time. I didn't know why he was taking her. I used to send nappies and so on, and food for her various meals. After he had had her 3 or 4 times, a friend of mine came round and said that she did not want to fall out with me, but she was not prepared to be put upon to look after my child one day every week. He had been taking her there each Sunday, which was the only day she had each week for her husband. I had to say something to my ex-husband, and he hit the roof. He did not come for her for a few weeks, but when he did come, he didn't have anywhere to take her. So he would wander back with her at any time - perhaps after 3 hours.

This woman did not believe that her ex-husband really cared about the child.

> I was surprised at the beginning that he called to see her. But there was resentment at the fact that I told him to get out. Really it was the only weapon he had got. He gets at me through her. I am immune to anything else.

When the child was 3 years old, the woman employed a different solicitor, who thought that 7 hours access each week was excessive. He advised her that the only way she could get access reduced was by refusing all access. Her ex-spouse took her to court, and an interim access order was made while a welfare report was prepared. The woman felt that the reporting officer was very biased against her, and refused to co-operate with her. The court ordered 3 hours access per week, and this became the established pattern. The probation service involvement ended when

access was defined.

The mother claimed that since the court case the child developed a bowel complaint. She tried to have access deleted, but the judge threatened that if the case came back to court, he would have to consider whether she was a suitable person to have care and control of the child. The mother was too scared to take the case back to court, although she was convinced that the child's problem stemmed from access. A psychiatrist was seeing the child at the time of the interview, and was reported to have said that the complaint was related to the family situation.

Maintenance for both wife and child was paid reluctantly, and the man had been imprisoned for non-payment on a number of occasions.

This case raises a number of issues. The solicitors' agreement on extensive access to a 10 month old baby did not appear to regard the welfare of the child as the first and paramount consideration. It is another example which raises doubts about whether agreements between solicitors are a good way to make arrangements for children.[2] Another curious feature of the action of this woman's solicitor was his failure to question the reporting officer in court, in spite of the woman's grievances about this officer.

It is notoriously difficult to demonstrate that access is damaging to a child, and the psychiatrist treating this child was not prepared to testify in court, although he was said to have expressed the opinion that the child's behaviour was the result of the strained family relationship. There was no doubt that the child was disturbed, and if the woman's account of the court hearing is correct, it appears

2. See chapter 4 pp 69-70

that the judge was insensitive to her complaints and worries about the child.

3. The Custodian Parent who wanted the Breakup, tried to make a Complete Break

There were 5 non-custodian fathers who had wanted their relationships to continue, and who claimed that their partners tried to end all contact by denying access to the children. These relationships were long ones - over 10 years in all but one case, and only 1 child was under school age at the separation.

(i) The man in this case reported that his wife had always helped him with his business during the marriage, including the 5 year period after their child was born:

> When my daughter arrived, she was brought to the shop in a carrycot, and we ran the shop together. My daughter was in the back of the shop all day. Mind you, we had a car available for each of us, and so it was not strictly a 9.00 a.m. to 6.00 p.m. job. My wife could go home at 4.00 p.m. if she wished, or she could take the morning or afternoon off, as the business pressures determined. If I had a busy day, she would be there. If it was a quiet day, she would go home early. She was giving the whole of the time during the day to business matters, and she was giving the rest of her time in the evening to our daughter. I felt that perhaps I was being neglected after working hours.

The business was seasonal, and during busy periods they were both hard pressed. Capital was needed, so there were financial difficulties during the marriage. They did not have a washing machine, for example, and the man commented that washing was difficult as they lived in a little

cottage in the country. When his wife became pregnant again she left abruptly, without telling her husband where he could contact her. Presumably she could not cope with the prospect of bringing up another child under these conditions. The man blamed business pressures and financial problems for the breakup, and did not consider that there were any real problems within the marriage itself. He hoped for some time that his wife would do the "right thing" and return to him, but said that her mistake was in contacting a solicitor, and proceeding with the divorce.

The second child was adopted soon after the birth, contrary to the wishes of the father. He was very critical of the Social Services department for pressing him to sign the adoption papers. The divorce took 18 months, and during that period the woman denied access. Occasional visits took place after the divorce, under a defined access order. The woman did not ask for financial support, nor for any share in the matrimonial home.

This man appeared to have very little insight into the extent of the demands he made on his wife. The child was not reported to have had any problems following the breakup.

(ii) The second man reported that his ex-wife was mentally unbalanced, and had often disappeared for a week or two during the marriage, leaving him with the children. She was on probation when the separation took place. Apparently this woman left for a battered wives' home, taking the children with her. The man denied having been violent with her, or with the children. A separation order was obtained from the magistrates' court, and matrimonial supervision orders were added. The man said that his ex-wife was a bit dubious about letting him see the children from the

beginning, but access did take place, including overnight visits. Some months after the separation the woman said that the 5 year old boy did not want to visit any more, and no further access to this child took place. The mother put the 12 year old girl into voluntary care on a number of occasions over the next 3 years, and Social Services were involved with the mother and the children. Sometimes the man was allowed to see the girl and have her home for weekends, but at other times Social Services refused to allow access. The man could not explain why this was so. At the divorce hearing the judge made no access order, and suggested that a hearing should take place in 6 months' time to review the access. The man continued to see his daughter when she was in care, but did not see his son. The court case over access was due to be heard shortly after the interview.

This man's account was confused, but he clearly felt a deep sense of grievance at being deprived of access to his son. He was an unattractive, rough-looking man who was barely articulate. The court appeared to have been concerned by the allegations of violence made by the man's ex-wife. Yet the woman's history was highly questionable: she had left all 3 children of an earlier marriage in care, and placed one child of this second marriage in care. The man had an earlier marriage and his mother had brought up his 2 daughters. The man was involved in the upbringing of these girls, and still visited them regularly. Social Services cannot have been too concerned about this man as they allowed weekend staying access to the child in their care. Yet the social worker involved was apparently reluctant to recommend that the man should have access to his son. It is possible that the man's appearance, combined with the allegations of violence, may have unduly influenced the social worker and the court.

(iii) The third non-custodian father in this category described his

marital relationship as "stormy and physical" from the beginning. He reported that his wife used to get overwrought with the children, particularly after disturbed nights. She was unhappy living in the North, and wanted to return to her home area in London. At one time the couple went to see the Probation Service for help with their marital problems, and found them very helpful.

The woman obtained an injunction against her husband not to molest or assault her or the children, and returned to London. The man's explanation did not include the reasons why his wife was able to get an injunction, so the marriage may have been more violent than the man reported. He was allowed very little access to the children, aged 3 and 6, and for 3 months before the hearing on ancillary matters no access took place at all. The man reluctantly accepted his ex-wife's offer of 2 hours access per month, but found the arrangement most inconvenient, as he had to travel to London for the visits. He applied for a re-hearing on access, but delays took place before the case came to court:

> I went through this long delay trying to get legal aid, because the bloke who was dealing with my case was off sick, and lost the papers. Another man took over, but neither of them could care less. When we finally did get it through to the court many months later, my ex-wife never turned up because the court had not informed her solicitor, so I went to London for nothing. The next hearing was 4 months later, and these months had built up to a period of about 18 months. For the first 3 months I did not see the children at all, and then I only saw them for 2 hours a month.

The Probation Service was involved, an access report was prepared, and the court defined access. When this access was again refused some months later, another court hearing took place, with a further access report. This

time the court made a matrimonial supervision order. There appeared to have been some confusion about this order:

> The probation officer was asked to call round and see me. He had no idea there was a matrimonial supervision order, so he had no idea why he was coming round to see me. After he had been coming for 4 months I told him there was this order. So the first few times that I had the kids up he never called round because I think that he was not right bothered and I don't think he thought it was necessary. Then she started screaming about not knowing what was happening to the kids when they visited. So he came round once when I had them for Christmas. They were here at Easter, but he had a very bad habit of forgetting to turn up - he is very absent-minded. So I took the kids round to the Probation Service, but he wasn't in, and I said to tell him when he came back that he was to call round and see me because the kids were really happy. They were enthusiastic about seeing him, and I thought that I had to get him round to see them in order to satisfy her. So I got him round and he had about an hour with us. He was very happy about the situation. He thinks that the access that I have got is ideal for the situation, and he definitely thinks that it ought to continue as well.

The man was happy with the assistance given by this probation officer in facilitating access arrangements.

There appeared to have been some problems over maintenance in this case when the man was out of work, but he claimed that he was happy to pay whenever he was able to do so.

This case illustrates the delays that sometimes take place

before a case comes to court, and also the existence of deficiencies in communication between the court and the welfare services. The children did not appear to have been adversely affected. It is also an example of how a third party can intervene successfully to make access arrangements between a couple who cannot communicate directly with each other.

(iv) This non-custodian father was married to a Spanish woman who was homesick, and wanted to live permanently in Spain. Her values were very different from his, although they were both Roman Catholics. Their sexual relationship was virtually non-existent as the woman refused to use any form of contraceptive, but did not want another child. There was also friction when the woman refused to allow her husband to bath the small girl, or to see her naked. The woman attempted to remove the child, aged 9, from the country, and her husband had the child made a ward of court. No divorce took place in this case.

This man had not seen his daughter for 5 years, in spite of numerous orders from the magistrates' court to the High Court. The history of the access problems was as follows. Initially access was defined, and this was the man's account of what took place during his visit:

> The first Sunday that I went over, I said to the child to pop on her coat and we would go out for a walk. My wife said I was not taking her anywhere. She said she did not know that I was going to bring her back, and that she was coming with us if we went. I said that she was not, and that I was a reasonable person and all I wanted was to have a chat with the child. She said that if I talked to the child at all, it would be in this house. So we sat in three

chairs, and whatever question I raised, if my wife thought she should not answer she would tell the child not to say anything. I would say, how are you getting on at school, and my wife would say not to answer as I was not interested. So the poor kid could not say anything. She was literally torn apart between the two of us.

The man applied for a further hearing on access, but the case was not heard for 14 months. By this time the man claimed that the child had been thoroughly indoctrinated against him, and indeed he had received a letter from her, saying she did not want to see him again. The Registrar interviewed the child, and advised against access until suitable arrangements could be made by a child care officer.[3] The man was very critical of the officer concerned:

> The thing that I am very bitter about is that the child care officer who was given the case is an unmarried miss of 45 who lives in the next street to my wife. They pop round to each other's houses for cups of coffee nearly every day.... I think it is wrong that a child care officer, who should be impartial, should have continuous contact with one party.

The man gets a letter from this officer about twice a year, telling him how the child is getting on at school, and regretting that she still refuses to see him. A further court hearing on access was pending at the time of the interview, and the man felt that if this was unsuccessful, it would be pointless to go on trying to see his child. It did not appear that the child care officer was committed to re-establishing access.

3. Since this order was made, changes in the law have taken place. A Practice Direction (1977)3 All E.R. 944, empowers the Registrar to make access arrangements only where the other party consents to the access, and the only issue is the extent of the access. In Orford v Orford, (10 Fam Law 1980 C.A.), Orr LJ ruled that it was wrong in all but very exceptional circumstances for an order to be made suspending access until the welfare officer considered it to be appropriate.

This man maintained his ex-wife and child, and there were no disagreements over financial matters.

(v) The last man in this category was also unable to see his children. He was not married, but had lived with the woman concerned for over 12 years. He reported that she had been treated at a psychiatric hospital on several occasions, and was an alcoholic. She left and moved to the South with the children, and refused to let him know her whereabouts. The Magistrates' Court ordered maintenance, but the man refused to pay unless he was allowed to see the children. He was told he had to take out a separate summons for access. There appeared to have been a lack of co-operation between the two magistrates' courts:

> I went across to take the summons out, and I got a letter from the court saying that the court (in the South) could not do anything because they did not have her address. So then I took it on myself. I wrote to the (southern) court and said that if they did not know where she was living, how were they able to pay her the maintenance I was sending. At that point the court wrote and said that they did have the address, and had phoned the (northern) court and told them the address. So why did the (northern) court write to me and say that they did not know her whereabouts?

The case was finally heard 15 months after the separation, and welfare reports were prepared on both parties. The officer who reported on the man was impressed with his desperate concern to see the children, and was in favour of access taking place.[4] The woman alleged that the man had been violent with her, and he challenged her to produce one witness who could support her, but she did not do so. The main claimed that his

4. This report was produced and read during the interview.

denial was supported by third parties. The woman wanted a further period of 1 year without access, to allow the children to settle down, but the man refused to accept this. Then the woman insisted that a third party should be present during access, and an order was made for supervised access over the next 3 months, when a further hearing should take place. At the time of the interview the probation officers had been unable to get the woman to agree to the supervised access. This man's desperation was clear in his closing comment:

> I think that if it goes as far as the court stopping me seeing the children, I would go as far as to snatch them. Not on a permanent basis, but to bring it all out into the open. I do not want to do that, and I might be wrong, but you get pushed to such an extent that you can't see any other way round. I think I have been more than patient already.

The difficulty of setting up access when the custodian parent is determined to prevent it is illustrated in this case. It also provides another example of delays taking place before a case is heard in court.

B. THE BEHAVIOUR OF THE PARTIES IN GROUP B WHO BOTH WANTED THE MARRIAGES TO END

The parties in this group, who both wanted the marriage to end, had grown apart and in the majority of cases there was agreement over custody, access, maintenance and the disposal of the matrimonial home. However doubts and fears were expressed by a number of these parents, especially regarding access. A small number of parents appeared to want a complete break with their former spouses, and their problems will be described in detail.

1. Contact to Arrange Access Only

Interviews took place with 4 women and 7 men[5] in this category. These marriages were fairly long ones, the average length being 8½ years, although 5 were over 10 years long. The children were mainly in the 5 - 7 year old age group at the separation, although 6 were under school age.

The most notable feature of these parties was the way they tried to co-operate with each other, and got together to sort out misunderstandings. One man reported that his ex-wife realised how much he missed the children, and allowed him very generous access. Another man spoke of his ex-wife's financial position, and said that if she became unemployed, he would raise the children's maintenance to help her out. His wife was also interviewed and she spoke of their determination to work together over the children:

> Working together over the children is a sort of compensation when your marriage breaks up. You feel that you have taken something away from your children. You have taken away the conventional family life that their friends have, and possibly some of their security. You don't know what sort of effect it is going to have on their adult lives, and the way they will make relationships. I think that we both felt that the children had rights as independent people as to what they want to do.

One woman described a minor misunderstanding that took place during access. She immediately phoned her ex-husband, and put the record straight. One woman reported that at first she would only allow her ex-husband as far as the kitchen door when he came to collect his son. However, she soon realised that she was being stupid, and changed her behaviour:

> He used to walk in here as if he still belonged. I soon accepted that he came. I think it is very important for the child that

5. Two couples were interviewed, and one man reported on both his marriages.

the parents should remain friendly. I think that is vital. They don't want any animosity.

Another woman described how her children tried to play off one parent against the other:

For a while they tried to play off one of us against the other. But I rang my ex-husband during the day, as I do whenever I think that anything is wrong. I said that the older child was trying it on, and that the younger one was following her, saying that dad was saying this. He was getting the same his end. So I went up to his house, and we had a good talk with the children. I said that we both love them and both want them to be happy. But I said that they must not think that they could tell me anything about their daddy that I do not know. I said that daddy talks to me on the phone, and we both know everything that goes on at each other's houses concerning the children. They have gradually learned that it can't be done, and that is a good thing.

Another woman realised that the children told each parent that they wanted to live with him or her, so she did not immediately apply for a change of custody. She said that if she thought the children were unhappy, she would do so at once. Another couple described how they arranged the transportation of the children to and from each other's homes, to fit in with the children's favourite TV programmes.

Nevertheless, misunderstandings and difficulties arose even among this co-operative group, and reasonable fears gave rise to problems, particularly when new partners were involved.

One woman, who did not have custody of the children, was

reported to be ambiguous in her response to her ex-husband's girlfriends:

> She was ambiguous about the presence in the house of another woman who was being Mum to her children. She was probably a bit frightened about the possible outcome as far as the children were concerned. But at the same time she liked me to have a happy relationship because it made it easier for her to negotiate with me.

One man had difficulties in establishing staying access after his ex-wife's marriage. Originally access had taken place in the matrimonial home. This enabled the man to continue playing the role of father, and provided continuity for the children. The arrangement suited both parties as the man had no home to take the children to, and the woman was able to establish her social life. Later this man moved to accommodation suitable for the children's visits, and access took place away from the matrimonial home. In the meantime, his ex-wife remarried and had another child. There was resistance on her part to allowing the children to stay overnight with their father, as the children were regarded as part of the new family. However the matter was finally resolved amicably, and staying access was established.

A man complained that his access was "chipped away" as the children grew older. His ex-wife believed that the children should have frequent visits with relations and friends. These visits made it difficult to fit in the access. Also the mother encouraged the children to have many outside interests, so that the children were always occupied, and this made access periods shorter. Over the years the amount of time that the children spent with their father decreased. Another non-custodian father made the same complaint. Three non-custodian fathers said they became more like step-parents to their children when the custodian parent remarried.

One woman described how hard she found it to accept that her child should spend the day with her ex-husband and his co-habitee. Her husband had left her for this woman. But she said that she recognised that this arrangement was better than the child and his father tramping round town for the day.

One man spoke of his fears for the future if either he or his ex-wife settled down with a new partner:

> It is nothing to do with me if she gets someone else. But where it does affect me is in relation to the children. We have discussed this and it has arisen. It is nothing to do with me as long as my relationship with the children is alive and intact. I won't say it would not be affected by it. And one does not know how. So, as far as I am concerned, it is another anxiety for the future. A lot of my anxieties at the beginning have been allayed, but there is one there. How will things pan out if there is another family? If my wife lives with a second husband and the children, then my position is a bit demeaning if I am still alone. The question of the role that the new husband would play in relation to the children is the difficult area. It is new territory. I am just thinking it through for the future. There was a possibility that she was going to settle down with someone - it did not last long as a possibility. But it certainly was a crisis when it arose. I had to sort out what I thought about it and she had to sort out what she felt about me and the children. It did not continue for long enough for us to have to test it out. Certainly, initially, all the reassurances have worked out alright. Also I might get involved in something. I am in another role as far as that is concerned, and it could get very complicated. I don't think that

there is an easy answer to it except working it through as you go along and continuing to think of the children and how they think about things. At this stage I do not think that the problems with the children would be too great. They would not switch their allegiance from me to another man. They are too old for that now. They would still continue to come here and enjoy being involved in anything I was doing. So it is really a balancing act which is fine in theory, but I am certainly conscious that it can be pretty damning.

This man's ex-wife confirmed that when she had a boyfriend some months after the breakup her ex-husband became intensely jealous, and accused her of trying to supplant him in their children's affections. She convinced him that she had no intention of doing this, and gradually he calmed down. Since then he had come to realise that she would not attempt to put someone else into his place. The couple could talk to each other, and thus the reasonable fears of the man were allayed without serious repercussions.

There was one "grey area", referred to by many parents, which concerned the position of the non-custodian with regard to disciplining the child. Some custodian parents objected when a child was smacked. One non-custodian parent described how unsure she felt at first as to whether she was allowed to chastise her children during access. In this case her ex-partner told her to go ahead and correct them whenever their behaviour warranted it. Another non-custodian parent said that she let things go which she would not have tolerated beforehand. This was because there would be insufficient time for the child and the mother to work through their feelings if a row took place. One non-custodian father remarked on his guilt about the children not having a resident father, and said that this made it difficult for him to correct them:[6]

6. This connection between guilt and the disciplining of children was noted by Wallerstein and Kelly (1980:112)

You have to be a true parent and you have to tell them off. You have to be severe with them and say no, and take the consequences, just as you would if the pair of you were together. I think there is a tendency to treat children as more adult than they are, through guilt. You feel guilty about being hard on them at the same time as you are depriving them of a family. It seems like adding insult to injury. But I think that you have to resist this feeling. I am sure that the children won't be helped otherwise.

None of the difficulties encountered by these parents gave rise to court cases.

2. The Complete Break

In none of these 3 cases was there a legacy of hatred and bitterness because of the behaviour of the ex-spouse during the marriage. Either one party appeared to want the child for himself or herself, or one party was concerned by the possible adverse influence on the children from contact with the former spouse. The partners of these parties all appeared to want contact with their ex-spouses to make the access arrangements only. Two of these marriages were short, being 2 and 5 years, with one 2 year old child, and one child who was born after the separation. The third marriage lasted 14 years, and there were children aged 13, 11, and 6 years at the breakup.

(i) The woman was interviewed, and recounted how she sought help during the marriage:

I suggested that we went to Marriage Guidance, but he thought the people there were not qualified enough. He agreed in the end,

but only attended twice, and left during the second session. The counsellor continued to see me for a year, and helped me to find an identity. He made me realise that the breakup was possible.

By the time of the separation the woman had developed, and her values were very different from those of her husband. Initially he agreed that she should have custody of the children, but later he contested custody and a welfare report was prepared. He appeared to be afraid that the children would be influenced by their mother. An agreement was reached between the solicitors before the court hearing, and the children were divided between the parties, and access was defined. After some time the children with the mother refused to visit the father, and he retaliated by restricting the visits of the child who lived with him. The woman approached the Probation Service for counselling:

We had a series of weekly counselling sessions where I talked out all my feelings about access. I made a contract with the officer that I would not take the case to court for 6 weeks, while he tried to help. He felt that he needed to see the children in my custody, and I asked them if they would see him. I tried to tell them what family therapy was all about, but they were not keen to do it. They agreed for my sake. The officer tried to suggest to them that I was taking the rap for a situation that they had really initiated. Their decision not to see their father had started this trouble. They had a perfect right to make this decision, but he thought it would be helpful if they were willing to go and see their father and talk to him. He thought that they ought to try to persuade him that the decision had been their own, and the reasons for it, as this would help a lot with enabling their sister to visit. The children refused. They said that their father would not listen. They would be willing to go if they thought

> that it would do any good, but they were not prepared to hurt themselves for nothing. I went back to see the officer at the end of the 6 weeks, and said that I was going to have to take the case back to court.

Access was redefined after a welfare report, and the woman asked for a matrimonial supervision order to facilitate access. The welfare officer agreed to supervise, and the order was made. This is how the woman described the operation of the order:

> That supervision order was the turning point. My ex-husband, being such an authoritarian person himself, respects authority. When the officer made the arrangements and said this was to happen, he did it. Gradually, over a period of about 2 years, we had practically phased her out. The order continues until the youngest child is 18 - she is 16 now. We hardly ever use her now, but for the first 2 years, every school holiday had to be arranged, and she worked very hard for us. I have nothing but praise for the whole thing.

The children who lived with the mother started to visit their father again when they grew up. This case provides an excellent example of the way matrimonial supervision orders can be used to facilitate access.

(ii) This woman had 2 children when the marriage took place, and both appeared to have been adversely affected by the marriage, particularly the younger girl, who developed a bed-wetting problem. A child was born of this marriage, and the woman claimed that the man made a great fuss of his own child, and thoroughly spoiled him, while disregarding herself and the other 2 children. When the couple separated, they agreed that the

mother should have custody of the 2 older children, and the youngest boy should remain with his father. Subsequently the mother successfully contested custody of this child. She allowed the father weekend staying access with his son, but the case had a tragic sequel, as the man kidnapped the child during access, and removed him from the jurisdiction. Possibly the man felt that the court's decision was unjust. The 2 year old boy was reported by his mother to have wanted to remain with his father, and to have cried a lot when he was moved to her home.

(iii) Difficulties arose in the early days of this marriage, and the man was anxious not to start a family unless the relationship stabilised. The woman wanted a child, and found she was pregnant after the separation. This was the case where a nominal maintenance award was made to the woman by the Magistrates' Court, but was increased at the second hearing ordered by the High Court.[7] This woman saw no reason why her ex-husband should be involved with the child, other than to provide maintenance:

> The Magistrate asked my husband if he agreed to my having custody, and he said yes, provided he could have access ... I thought this was the height of all unfairness ... I was worried right from the beginning, and for quite a long time, about the effect of access on (the child). He had not wanted the child in the first place, and had shown no interest until after she was born ... I am not sure to what extent children can form an attachment to a father if he keeps visiting. I was not convinced that she could not form an emotional commitment if he called once a month. I thought that if she did form an emotional attachment, that would be bad for her ... If he managed to be something to her, this could be quite alarming. She might want access more

7. See appendix E.

> frequently than was ever possible. I can only see it as emotionally traumatic for (the child) to create something that otherwise would not have been there. As a general rule I don't think that I would agree to deny access to a man who had, in some senses, been a father - in an emotional sense. When I thought he might visit often I was quite prepared to explore the ground for having access deleted. As events turned out the situation has got less and less worrying. There is no longer a problem now as far as I am concerned, as the time has passed when she could form a close relationship with him.

The man lived a long way away, and visited about twice a year. He was not allowed to take the child out of the house, nor to talk to her alone. The child experienced difficulties when she started school, as she was unused to men, and did not get on well with other children. However, the mother reported that she adjusted after a year or so.

There was no doubt that this woman loved her child dearly and wanted their relationship to be the primary one in her own and the child's life. Whether this was in the child's best interest in the long run is questionable. It was worrying to find that she was successful in preventing the development of a relationship between the child and the father, with no third party intervention.

C. COURT ORDERS

Custody was contested in 2 cases and access in 9 cases among the parties interviewed: 11 welfare reports were prepared; access was defined in 6 cases, including one order for supervised access; and 4 or

perhaps 5 matrimonial supervision orders were made. Long delays in access variation hearings taking place were reported by 3 men.

Two defined access orders were accompanied by matrimonial supervision orders and were successful in enabling access to take place. The parties regarded the assistance given by the officers as crucial in facilitating access. A breakdown in communication between the court and the welfare service had resulted in one of the parties informing the welfare officer that a matrimonial supervision order was in force! Two defined orders resulted in access taking place without welfare officer intervention: the custodian parent was anxious that access should take place in one case; and the custodian mother allowed access only under the threat of the possibility of losing custody in the other. In both cases the desirability of access was questionable as far as the interests of the children were concerned. Two defined access orders were ignored by the custodian parents and no access was taking place in either case. A matrimonial supervision order may have been made in one case as a child care officer was involved and kept the non-custodian parent informed of the child's development. The commitment of this officer to the re-establishment of access appeared questionable, according to the man's account. A supervised access order had been made in the second case, but the officer failed to persuade the custodian mother to allow access to take place. No order for access had been made when the initial order was made because of the allegations of ill-treatment. There was one other case in which no order regarding access was made when the initial children order was made following allegations of ill-treatment, but a matrimonial supervision order was added to the initial order, whose purpose appeared to be to support the custodian mother and investigate the desirability of access. Social Services appeared to vacillate, allowing overnight visiting to one child who was in care, but not making a recommendation on the desirability of access to the second child. One other matrimonial supervision order had been in force for too short a time for any assessment

to be made of its success: its purpose appeared to be both to support the custodian mother and to re-establish access.

Maintenance orders were made by the courts in 15 of the 27 cases, although reluctance to comply with these orders was reported by 8 women. If the court's decisions regarding custody, access, maintenance or the disposal of the matrimonial assets were considered unjust by one party, then problems were likely to arise. One contested custody decision was considered unjust by the non-custodian father who later kidnapped the child. Maintenance orders for 5 ex-wives were resented on the ground of injustice: 4 after short marriages; and one after the ex-wife left the children and was awarded a half share in the proceeds of the sale of the matrimonial home. Two custodian parents considered access orders to be damaging to their children, and one refused to obey the order. Finally one man considered the court's failure to make an order granting him access to his child to be unjust. The practice of solicitors of getting their client's agreement on the arrangements for the children, to avoid disputes in court, may not be in the best interests of the children concerned.

D. OTHER COMMENTS OF PARENTS

1. The Legal System

Some parties felt that their solicitors "took over", and merely kept them informed on the state of play, while others instructed their solicitors on the agreements they wanted, and made use of them to make the arrangements for the divorce hearing. Six of the parties interviewed were vague about what had happened at their divorces, and were unaware of any options that might have been open to them. Two

parties were undergoing psychiatric treatment at the time. They followed the advice of their solicitors and signed the papers presented to them. One woman remarked that she found it hard to connect what was happening in the court with what was happening to the family. However, nine parties were very much in control, and their solicitors did as they were instructed. Three parties dispensed with solicitors altogether, and did their own "Do-it-Yourself" divorces.

One party complained that his ex-wife's solicitor tried to stir up trouble. His wife was advised to change the agreements, and ask for as much as she could get from him. "I felt that the role of the solicitors involved was to antagonise us. I felt that very strongly", he said. Another woman's solicitor was very vague and uneasy about her suggestion that there should be a matrimonial supervision order for access purposes.

A number of comments were made about probation officers and social workers, especially in relation to the preparation of welfare reports. Two parties complained about unannounced visits. This is what one of them said:

> The first time she came unannounced. We had a friend to tea, and I was busy cooking. I said that I thought she was going to tell me when she was coming, and she said she did not have to, but that she would make an appointment next time. I felt outraged by this. I had not had time to prepare the children for her visit. They were very spontaneous with her, and they talked to her and showed her round the house. It probably was the best way it could have happened, but I felt that she had tremendous power.

One woman described her uncertainty about the possibility of

getting a fair and unbiased report, as her life-style was unorthodox, and she was less well off materially than her ex-husband. However, when she read the report before the court hearing, she felt that it was very balanced, and did justice to both parties. Another woman was very critical of the probation officer who prepared the report, and of the report itself:

> The probation officer was appointed to do the report, and she came and asked questions. The first time I saw her was in court, and she was quite funny, and I came out very upset. The second time she came my mother was here, and she was as sweet as pie. I thought that I must have caught her on an off-day. At that time she had not seen my ex-husband, but when she came back the third time, she had seen him, and she seemed quite smitten by him and his parents. Whatever I said from then on, she contradicted me to my face.

This woman refused to co-operate with the officer after a row. The officer had told her ex-husband that she would watch the reactions of the child when he called to collect her for the next visit. The woman was furious because he was given prior warning of her presence and put on a "performance", whereas she had to put up with unannounced visits at any time. This was her comment on the report:

> She asked for the phone numbers of my health visitor and doctor, but contacted neither of them. I was amazed at her report. I had not got good furniture at that time, and the flat was not decorated. He lives with his parents, who are well off, and have a 4-bedroomed semi. In the report the officer described my flat as modern and luxurious, while his parents' house was called a very modest, small semi. They were described as heart-broken people, who cried for their grandchild who was lost to them. I was just made out to be a heartless bitch, who was completely cruel.

This report was not challenged in court, and the woman resented the fact that an access order was made on the recommendation of the officer. The contents of 2 other welfare reports were considered inaccurate by the parties but none of the solicitors was reported to have questioned the reporting officers in court. None of the parties suggested that mediation had taken place during interviews with reporting officers.

One man complained that the supervising officer got very friendly with his ex-wife, and his child often did the officer's shopping. This man said that the officer was supposed to be attempting to get access started, but merely reported to him once or twice a year on the child's progress at school. The man argued that this officer was no longer an impartial arbiter. However, his solicitor advised him against complaining to the court, as he said that social workers were regarded as unbiased personnel, and he would get nowhere.

Two parties complained when very young officers were put onto their cases, but reported that they were satisfied when these officers were replaced by older, more experienced officers. One woman was very angry because reference was made in a welfare report to the fact that she only associated with women friends. She felt that the implication was that she was a homosexual, whereas it was very difficult, she said, for her to meet men when she had to look after 2 small children. One man was not satisfied with the time it took for the probation officer to contact him when a matrimonial supervision order was made. He saw the purpose of the order as the re-establishment of his access, and he wanted the officer to sort out the matter right away.

Judges were also criticised by some parents. One man went to court for an agreed joint custody order, with care and control to him.

The judge refused to make the order, and said he did not believe in them. Another man described the reluctance of the judge to make an order granting him custody of a 4 year old boy:

> We were seen by the judge in chambers after the divorce, and when it came to my turn, the clerk called for my ex-wife. I said that I thought it was me the judge wanted to see, but that if he wanted to see both of us, he could, as we were both in the court. The clerk looked very puzzled and went to see the judge who said he would see us both. The judge looked at me, and asked if I was the one who wanted care and control, and I said yes. Then he asked if the child had been living with me all this time, and I said yes. He asked if the arrangements were suitable to both parties, and we both said yes. He paused, and said that he believed I had a full-time job. I said yes, but that the hours were flexible. Then he said, but you must have help, and I said that I did not. He said, well, if that is the arrangement that you want, then I suppose you must have it. The disbelief! But there was something that I remember from the actual decree absolute paper. It was not the category of the best possible arrangements, but the best in the circumstances, so clearly he was unhappy about it.

Another woman described the Children Appointment in this way:

> We went to see the judge in chambers. The judge merely rubber stamped the arrangements. He asked about babysitting. In fact I rarely went out, and if I did, mother came over to babysit. The judge asked whether the child had far to go to school, and did he have to cross a road. And he asked where he slept in the house. At the time he slept in the attic, and the judge pointed out the

> fire hazard. When I came home I moved him into another bedroom. He also asked how often my ex-husband came to see him. I told him once a week and holidays. The home and the maintenance were not mentioned.

Two parents remarked that divorce was used to check up on them as parents. One woman, who resented the intrusion, said the following:

> There is one point I would like to make. Had my husband been living with both of us, I could have knocked that child about, and nobody would have wanted to know. But just because he has left home, I had to go before a judge to prove that I was a decent person to look after my child. Now, I object to that. That is one point that I really object to. I thought during the hearing, that if he dared to say anything about babysitters, or anything like that, I would have jumped on him.

Two parties resented these Children Appointments, but four reported that the investigation was superficial and the questioning was not nearly detailed enough. The actual divorce was not experienced as harrowing or degrading,[8] but 3 parties were indignant that the divorce could be made absolute without ancillary matters being decided. One custody hearing took place 1 year after the decree absolute. The orders regarding children, when there were no disputes about custody or access, were regarded by the parties as largely irrelevant.

8. Most of the divorces took place under the Special Procedure, so the parties did not have to undergo questioning in open court. M Murch et al (1975) had found that this experience was an ordeal for many people.

2. The Separation and its Aftermath

The painful experience of divorce was described by one woman:[9]

> Divorce may be easy on paper, but it is not easy. The traumatic experiences you go through trying to sort things out. It is just unbelievable. But until someone is in it, they don't realise what it is like. Nobody wants to be divorced; nobody in their right mind. But you have to take your chances when things have gone too far, and try to find a better life.

The difficulty of resolving the problem of whom the children should live with resulted in at least 2 marriages continuing for over a year longer than they would have otherwise.[10] In both cases the parent who eventually left the children was very torn by the necessity to do so.

The assumption that children ought to be kept together as far as possible was disputed by a woman whose parents had divorced when she was a child.[11] She and her sister had been kept together, and the sister had tormented the woman so much during their childhood, that she still got upset recounting her experiences nearly 50 years later. A 15 year old child of divorced parents who requested to be interviewed disliked her brother, and was much happier when they were separated. However, a number of parties wanted the children to be together, as they got on well.

9. McGregor et al (1970) recorded no support for the view that wives rush quickly and heedlessly to the magistrates' court at the first sign of a matrimonial rift.

10. Childless wives were found to resort to the court significantly earlier than those wives with children. (McGregor et al, 1970)

11. See Chapter 1. Rosen (1977) also suggested that splitting siblings between parents may not necessarily be detrimental to the children.

One point that came up in 4 interviews was the way the child should address the non-custodian parent. Children were confused when they had two Mummies or Daddies, and the absent parents still wanted to be called this. One man said:

> They are beginning to ask questions like, we have 2 daddies, don't we? I always work on the theme that they are better off than their friends at school. I do not resent the more active role that my ex-wife's new husband plays in the bringing up of the boys. I suppose if they knew the difference between a stepfather and a father, they would look on me more as a stepfather. But I say to them that I am their "real" daddy. When they say that they have 2 daddies, I agree, but I add that I am their no. 1 daddy.

A change in the child's surname was objected to by 4 parties, but one father was prepared to tolerate it as long as the child continued to call him daddy.[12]

Three parties claimed to have experience of cases where the children turned against a parent who ran down the other parent to the child.[13] One woman who had worked in a boys' boarding school had many examples of such cases over the years. She explained the children's responses in this way:

> It is not possible to influence a child against the other parent without losing his affection, in the long term. The child is selfish and has a sense of self-preservation. If you say that his father is a thief, you are taking away some of his security, and he wishes you would shut up .... Children would rather not know. They would rather think that their parents' faults were due to

12. For the legal position on changing children's surnames, see ch. 2 p 25
13. Rosen (1977) reported that the denigration of one parent by the other was most distressing to children.

> a bad fright during their childhood, than that they have bad parents.... The child may be convinced by the deprecations, but when he is about 14 or 15, he will go out in search of that parent, or he will go out later in life. I have seen it time and time again. It is not just that the absent parent is mysterious to the child. Even the bad, deprecated parent will be sought, and the child will want to give him another chance ... One mother was definitely wronged, but she let it out, let out her resentment, and told the child that the father was no good. But one does not want to be descended from a father who is no good. When a parent says that your father is a no-good bum, she takes away something of yourself, and makes it evil. You want to wipe that out ... In one case, the father went off and the mother kept the boy at school, and her boy turned up absolute trumps because the mother never said an ill word against the father. It is always the parent who utters the deprecations that loses out.

Three parties stressed the fact that they avoided any criticism of their ex-partners in front of the children.

One man was having a struggle keeping up the access to his young daughter, but he considered that if he stopped these visits, the child might feel worthless. He was obsessed with his own worthlessness, and wanted his daughter to avoid these feelings. The past experience of another woman affected her attitude to access. She had seen very little of her father after her parents separated when she was a child. She was anxious that her child should have frequent visits from his father. Free access was not always welcomed. One non-custodian father insisted on regular visits, as he could not organise his new family otherwise. A number of children tried to get money off the absent parent during visits.

This was reported by 2 custodian parents, and 2 non-custodian parents.

The experience of access was not always welcomed by the child. One woman whose parents were divorced when she was a child spoke of access as "the time when the child was at the disposal of the non-custodian parent". This woman felt that the aspects of the other parent in her led both parents to behave unkindly to her.[14]

The difficulty of visiting fathers who did not have a home to take the children to was referred to by a mother of 2 divorced sons. She suggested that a grandmother could provide premises for access in some cases. When this was not possible, there ought to be some provision, she said:

> There must be somewhere to go. I think there ought to be room somewhere, with plenty of armchairs and games, where they could sit and have the child on their knee and talk to them. This is what we are short of. Perhaps there could be lunch or tea or orange juice on sale. I think that wives could make things easier by allowing men to have the home for the day.

School reports were not usually supplied to non-custodian parents. Only 2 non-custodian parents interviewed received them. One woman wrote to her son's school requesting reports, and explained that although the child was living with his father, she had legal custody of him. The school did not reply, and she did not get any reports. No legal action was taken by her.

Five parties said there was a need for some intermediary body to help them sort out their problems after the separation. Six parties

14. Rosen (1977) reported that some children were upset by being compared in a derogatory way to the absent parent.

had sought help from Marriage Guidance before the breakup, but the parties did not think that this agency would deal with personal problems, once the decision to separate was taken. Nor did the parties as a whole think of the Probation Service or Social Services as agencies willing to assist them in a voluntary capacity.

E. DISCUSSION

It appeared from the evidence of the parties that problems arose in every case in which one party was unwilling to end the marriage. The court may know nothing of this reluctance, and it is not part of its function to suggest or provide counselling. Two parties approached the Probation Service for voluntary counselling, and the advice of a psychiatrist was sought in another case. Marriage Guidance counsellors may be prepared to provide such counselling, but is not known to do so by many people, and none of the parties interviewed used the service for this purpose. Nor are there mediation services available in many areas which could help the parties to resolve their differences when disputes arise.

The access practices of the parties were examined and a relationship noted between the infrequency of access and the reluctance of one party to end the marriage. No interviews took place with non-custodian parents who were unwilling to visit their children after the separations.

The children in the middle of their parents' disputes were affected in a minimum of 6 cases, involving 14 of the 21 children reported to have shown some signs of disturbance before or after the separation. Although children of 5 years and under appeared to be more vulnerable to

behavioural problems, only 3 of them were reported to have been used by their parents in disputes following the separations. It seems that young children in particular may sustain damage as a result of marital disharmony and breakup, but older children may be adversely affected by being used by parents to further their own disagreements.

Problems arose between the parties after the separation, not only when one party was using the children, but also when there were differences between co-operating parents, or reasonable doubts and fears about the continuation of the relationship with the child. Differences between parties may therefore be unrelated to anger or bitterness about the past marriage, or the ending of the marriage.

Counselling parents and children and providing mediation are not functions which the courts normally undertake, but it was clear from the interviews that such help is required if the parties are to recover from the separation or divorce experience without adding to the difficulties of their children.

CHAPTER 6 : THE RECORDS OF THE MAGISTRATES' COURT

A. DATA

The records of the domestic cases in the Magistrates' Court in the city of the study were examined for the year 1976. A report on the total volume of Children Orders[1] made in the domestic court is presented in this chapter. An analysis was also made of a sample of custody cases. The findings were compared with the results of the Oxford Study (Eekelaar et al, 1977). The problems involved in obtaining information are described in Chapter 1.

B. CHILDREN ORDERS

1. The Number of Applications, Original Orders and Variations

The number of applications for matrimonial and guardianship orders[2] made to the domestic court in 1976 was 3003. Of these 2636 applications were for matrimonial orders and 367 for guardianship orders. Multiple applications for matrimonial orders were common as the same petitioner made separate applications using a variety of complaints.[3] The order would be made on one ground only in most cases, and the other applications would be withdrawn. This large number of applications

1. This term is used throughout this study to cover orders relating to children which were made under either the MP(MC)A 1960 or the GOM 1971.
2. See Chapter 2 for details of the circumstances in which these orders may be made.
3. The complaints commonly used were desertion, adultery, persistent cruelty, and wilful neglect to provide maintenance for the wife and child/ren.

included many which were adjourned until a later date, resulting in double counting. From these applications 428 orders were made, 299 matrimonial orders and 129 guardianship orders. Matrimonial orders were made in 56 cases where there were no children, and these orders were excluded from the analysis below. Thus a total of 372 children orders were made, and these orders will be discussed in detail.

A total of 1410 applications for variations of orders was made to the domestic court in 1976. Of these 1224 were concerned with maintenance only, and were not analysed further. The remaining 186 applications resulted in 51 variations of children orders. The number of variations expressed as a percentage of children orders was 13.7%.

successful
There were 18/applications for variation of custody orders resulting in 15 custody variations, including one change in custody which was accompanied by the addition of matrimonial supervision orders. In the 3 applications which did not result in a change of custody, matrimonial supervision orders were added in each case. Four matrimonial supervision orders were revoked, and two were transferred elsewhere. Orders specifying access were made in 27 variation cases.

2. Custody Orders

(i) Custody: Original Orders

	Matrimonial Orders	Guardianship Orders	Total	%
Custodian Mother	225	99	324	87.0
Custodian Father	12	26	38	10.2
Children Divided	5	1	6	1.6
Custody to 3rd Party	1	3	4	1.0
Total	243	129	372	99.8

There were 372 children orders made in 1976. The mother was given custody of all the children in 324 cases; 225 under matrimonial proceedings and 99 under guardianship proceedings. The fathers were given custody of all the children in 38 cases; 12 under matrimonial proceedings and 26 under guardianship proceedings. These cases included 4 split custody orders[4] and 5 joint custody orders.[5] When split or joint custody orders were made, the parent with care and control was included in the custody figures. In 6 cases the children were divided between the two parents. In the remaining 4 cases care and control was given to a third party.[6]

Custody applications were made much more frequently under matrimonial proceedings when mothers were seeking custody, and under guardianship proceedings when fathers were requesting custody. Presumably mothers were likely to apply for custody under matrimonial proceedings in order to get maintenance for themselves, which is not available under guardianship proceedings. Fathers were unlikely to ask for maintenance for themselves, and so their applications were more likely to be made using guardianship proceedings.[7]

(ii) Custody Variations

Custody transferred to mother	Custody transferred to father	Care and Control to grandparents	Total
7	6	2	15

4. Split custody means that custody is given to one person, and care and control to another person.
5. A joint custody order means that both parties are given custody, and that care and control is given to one party only.
6. For details of cases in which care and control was given to a 3rd party see Appendix F.
7. See Chapter 2 for the differences in maintenance provisions under matrimonial and guardianship proceedings.

Mothers applied for a transfer of custody from the father in 9 cases, and were successful in 6 cases. In each case where the mother failed to get custody, matrimonial supervision orders were attached to the original orders. There was no indication that the fathers resisted any of the mothers' successful applications for a transfer of custody.

Fathers applied for a transfer of custody in 6 cases, and were successful in every case. In the first 3 cases, the father was given custody of one of the children, while the rest remained with their mothers. In the remaining 3 cases, custody of the whole family was transferred to the father. In none of these cases did the mother object to the variation order being made. In 2 cases, care and control was given to the paternal grandparents.[8]

The time between the making of the original custody order and the 1976 variation was one year or less in 6 of the variation orders made. In all but 3 cases the variation order had been made within 3 years of the original order. Thus custody variations tended to be made fairly soon after the original orders were made.

The number of children transferred from father to mother was 9:- 4 boys and 5 girls, the youngest being 9 years old. The number of children transferred from the mother to the father was 13 - 9 boys and 4 girls, and the age of the youngest child on record was 6 years. Three girls were transferred to the care and control of their grandparents, the youngest being 2. The net effect of the custody transfers was that more children were moved to their fathers, and boys were moved more often than girls.

8. For further details of the custody variation orders see Appendix G.

3. Specified Access Orders

(i) Access Specified: Original Orders

	Defined	Condition	No Access	Total
Custodian Mother	8	3	2	13
Custodian Father	4	1	0	5
Total	12	4	2	18

Specified access, i.e. an order other than reasonable access, was present in 18 orders; the mother was given custody in 13 cases and the father in 5 cases. In no case was the mother's access deleted.[9]

The father's access was defined as follows in the 8 cases where the mother was given custody: all day once a week (1 case); half a day each week (5 cases); staying access for alternate weekends (1 case); and 2 out of 6 weekends (1 case). The access conditions imposed on the father were as follows: reasonable access in the presence of the mother; access supervised by the probation officer; and reasonable access through the court. In the first case, the father had admitted persistent cruelty, but no welfare report was prepared. In the second case, the father denied the allegation of persistent cruelty; a welfare report was prepared and a supervision order made. In the third case, the father admitted desertion and a joint custody order was made with care and control to the mother. No welfare report was prepared, and the meaning of the condition is unclear.

The mother's access was defined as follows in the 4 cases where the father was granted custody: daily access (1 case); all day once a

9. The details of the cases in which access was specified when the origianl orders were made are contained in Appendix H.

fortnight and one evening a week (1 case); all day once a week and staying access over Christmas (1 case); and holiday staying access (1 case). The access condition imposed on the mother was reasonable access but not in the presence of Mr X. In this case a welfare report had been prepared.

The circumstances in which access was denied to the father were as follows: the father admitted persistent cruelty in one case and denied neglecting the children in the other. Welfare reports were prepared in both cases, but no further details were available.

Thus of the 372 children orders made in 1976, access was specified when the original order was made in only 18 cases, and fathers' access was defined twice as often as mothers'.

(ii) Access Specified: variations

	Defined	No Access	Total
Custodian Mother	20	4	24
Custodian Father	3	0	3
Total	23	4	27

When children orders were varied, access was specified in 27 cases.[10] When access variations were made the mother was the custodian parent in 24 cases and the father in 3 cases. Where the mother had custody access was defined in 20 cases, and welfare reports were prepared in 17 of these. In the remaining 4 cases the father's access was deleted, with reports in 3 cases. Where the father had custody access was defined

10. For details of the cases in which access was specified at variation see Appendix I.

in 3 cases, with welfare reports in 2 of them. Thus fathers' access was more likely to be defined than mothers'.

The father's access was defined in the following way: once a week minimum (12 cases); once a fortnight (5 cases); and once a month (2 cases). The mother's access was defined in the following ways: once a fortnight (1 case); and once a month (2 cases). When the mother had custody there was staying access with the father in 9 of the 20 cases, and 3 of the children concerned were known to be 5 years or under. When the father had custody, staying access with the mother took place in 2 of the 3 cases. The 3 children concerned were boys, but none of their ages was given.

The time between the original order and the 1976 variation was 3 years or under in 12 of the cases where the mother had custody, and 1 year or less in 5 cases. When the father had custody, the time between the original order and the access variation was 5 years or under in 2 of the 3 cases. Thus access variation applications tended to occur over a number of years after the original orders were made.

The details of the children in the cases were as follows. When the mother had custody, and the father's access was in dispute, there were 30 children: 21 girls and 7 boys, and 2 children whose genders were not given. The average age of the children was between 6 and 7, the youngest being 3, and only 4 children being over 10. When the father had custody, there were at least 3 children involved in access disputes, as well as one case where the number of children involved was not stated. All 3 children were boys, and their ages were not given. The fathers' access to girls was defined much more often than access to boys, and the girls included 11 of 8 years or older and 3 teenagers. None of the boys

whose access to the father was defined was as old as 8 years. Thus it appears that fathers' access to older girls is more likely to be defined than access to older boys.

In 4 cases where the mother had custody of the children the father had his access deleted.[11]

4. Welfare Reports in Particular Original Orders, and All Variations

Records were not kept in the court of whether welfare reports had been prepared, but the Probation Service checked their records for certain custody arrangements; all cases with specified access other than reasonable access; all cases where matrimonial supervision orders were made; and all variation orders.

(i) Welfare Reports: Particular Custody Arrangements in Original Orders

	Joint Custody	Custody to 3rd Party	Children Divided	Total
Reports	3	3	3	9
No Reports	2	1	3	6
Total	5	4	6	15

Five joint custody orders were made and welfare reports prepared in 3 of these.[12] When welfare reports were prepared, care and control was given to the father in 2 cases, and to the mother in the third. In both cases without welfare reports the mother was given care and control.

11. For details of the cases in which access was deleted at variation see Appendix J.

12. Guardianship proceedings were used in every case. See Chapter 2 for the explanation of this.

There were 4 cases in which care and control was given to a third party, and welfare reports were prepared in 3 of these. In the one case where there was no welfare report the custody of a boy was given to the maternal grandmother, with reasonable access to the mother. Of the 15 custody cases above welfare reports were prepared in 9 cases, 60%. Although it is not possible to draw reliable conclusions from such small numbers, it appears that welfare reports are more likely before these types of custody orders are made.[13]

(ii) Welfare Reports: Custody Variation Applications and Outcomes.

	Granted		Refused	Total
	Report	No Report	Report	
Mother's application for custody	2	5	3	10
Father's application for custody	2	4	0	6
Grandparent's application for care and control	1	1	0	2
Total	5	10	3	18

There was one variation order where the mother was given custody of a child who was born after the original order was made, and no welfare report was prepared. In the 9 remaining cases, the mother applied to have custody transferred from the father; she succeeded in 6 cases and failed in 3. Welfare reports were prepared in all the cases where the mother was refused custody and in 2 cases where she succeeded. There was no objection from the father to the transfer of custody in the 4 remaining cases.

13. Compare with the number of welfare reports prepared for the court in 1976 on page 152 of this chapter.

cases where the mother succeeded in getting custody without welfare reports being prepared. Thus custody appeared to have been contested in 5 cases.

Custody was transferred from the mother to the father in 6 cases, and welfare reports were prepared in 2 of these. When the transfer was made without a welfare report, the child was already living with the father at the time of the hearing in one case, while in the other 3 cases the mother consented to the transfer. Thus custody may have been contested in 2 cases.

Custody was transferred to the paternal grandparents in 2 cases with the consent of the parent who had previously had custody; the mother in one case and the father in the other. A welfare report was prepared in the case where the mother had previously had custody.

Of the 18 custody variation applications welfare reports were prepared in 8 cases (44.4%), including only one case in which the parties consented to the order being made, and custody may have been contested in 7 cases.

(iii) Welfare Reports: Specified Access in Original Orders

	Defined	Condition	No Access	Total
Report	6	2	2	10
No Report	6	2	0	8
Total	12	4	2	18

There were 18 original orders in which reference was made to access other than the usual reasonable access. The records gave no

indication why welfare reports were prepared in some cases and not in others. Welfare reports were prepared in 10 of the cases with specified access (55.6%).

(iv) Welfare Reports: Access Variations

	Defined	No Access	Total
Reports	19	3	22
No Reports	4	1	5
Total	23	4	27

There were 27 variation orders with regard to access. Welfare reports were prepared in 22 cases (81.5%). In the 5 cases where welfare reports were not prepared, the applications were not opposed.

(v) Welfare Reports: Matrimonial Supervision Orders Added to the Original Orders

There were 11 cases where matrimonial supervision orders were attached to original children orders, and welfare reports were prepared in all cases.

(vi) Welfare Reports: Matrimonial Supervision Orders at Variation

In 4 cases matrimonial supervision orders were attached when the variation hearing took place, and welfare reports were prepared in 2 of these. The records gave no indication why welfare reports were not prepared in the other 2 cases.

Matrimonial supervision orders were deleted in 4 cases and transferred to another area in a further 2 cases. The applications were made to the court by the supervising officers, who reported directly to the court. Thus welfare reports were prepared before 8 of the 10 variation orders were made.

5. Matrimonial Supervision Orders

(i) The Allocation of Matrimonial Supervision Orders added to Original Orders

	Social Services	Probation	Total
Custodian Mother	2	3	5
Custodian Father	5	0	5
Custody to 3rd party	0	1	1
Total	7	4	11

Matrimonial supervision orders were attached to 11 original orders covering 21 children. Seven of the families were supervised by Social Services, with orders on 17 children, and 4 families were supervised by the Probation Service, with orders on more than 4 children.[14]

The mother had been granted custody in 5 cases where supervision orders were imposed. The ages of the children supervised by Social Services were not stated. The cases supervised by probation included one case involving a girl of 5, and another case with 2 children under 5 years old.

The father was granted custody in 5 cases where matrimonial

14. The number of children under supervision was not stated in one case.

supervision orders were imposed, and all the children involved were supervised by Social Services. One case involved 2 children, a boy of 5 and a girl of 9, and another case 2 girls aged 2 and 3. The age of the child was not stated in the case where actual custody was given to a third party. As the mother is granted custody more often than the father, matrimonial supervision orders were added in relatively more cases in which fathers were granted custody.

The allocation of matrimonial supervision orders to either the Probation Service or Social Services is often said to be on the basis of age; young children are thought to go to Social Services, and older children to Probation. However, age was not the sole criterion in the allocation of these orders, as young children were involved in cases supervised by the Probation Service.

(ii) The Purpose of the Matrimonial Supervision Orders Added to Original Orders

The information available did not include the reasons for adding matrimonial supervision orders, so it was necessary to examine the circumstances in which orders were made in order to speculate on the purposes the court had in mind when making the orders. From the interviews with magistrates and judges, it transpired that orders may be made following contests over custody or access, in order to facilitate the co-operation of the parties with the arrangements for the children. Alternatively, orders may be made to support the custodian parent; either to check the arrangements for the children or to ensure that they are properly cared for.

Seven matrimonial supervision orders were added under guardianship

proceedings and 4 under matrimonial proceedings. Two non-custodian fathers opposed guardianship orders, and presumably custody was contested in these cases. The orders may have been concerned, at least in part, with sorting out the bitterness between the parties. All the other matrimonial supervision orders added under guardianship proceedings were made with the consent of the other party, so presumably custody was not at issue, and the purpose of these orders was probably purely supportive.

The custody issue is separate from the matrimonial complaint, so the responses of the respondents to the alleged offences did not often enable one to speculate on whether custody had been contested. However in 2 cases in which fathers were given custody, it seemed unlikely that custody was contested as the mother admitted desertion in one case, and the father admitted adultery in the second but the children were known to be living with him at the time of the hearing. The purpose of these orders was presumably supportive. Supervised access was ordered in one case, so clearly at least part of the purpose of this order was related to access.

Thus only one order was known to have been added when access was disputed, and 2 were probably added following contests over custody. It seems likely that most matrimonial supervision orders are made for supportive purposes; either to check the arrangements for the children, or to ensure that the children are properly cared for.

(iii) Matrimonial Supervision Orders: Variations

The original order was varied by the addition of a matrimonial supervision order in 4 cases, in 3 of which the mother unsuccessfully

applied for the transfer of custody from the father.[15] It was noticeable that in all the cases where matrimonial supervision orders were imposed at variation the father was the custodian parent, and in 3 of the 4 cases where he retained custody it had not been considered necessary to impose matrimonial supervision orders when the original orders were made. The mother's access had been defined when 2 initial orders granting custody to the father were made. The purposes of 3 orders was presumably related to the contention between the parties, and the 4th may have been purely supportive. The time between the original order and the 1976 variation was 1 year or less in 3 of the 4 cases.

There were 2 cases in which matrimonial supervision orders were transferred elsewhere, and 4 cases in which the orders were revoked. In all the cases where matrimonial supervision orders were revoked or transferred, the supervising agency was the Probation Service.

C. SAMPLE OF CUSTODY CASES

A sample of custody cases was made for further study. The sample consisted of all those cases where fathers were given actual custody of the child/ren when the original order was made (44). These included 35 cases where fathers were granted sole custody of all the children; 6 cases where the children were divided between two parents; and 3 cases where the fathers were given care and control in either joint or split custody custody orders. A random selection method[16] was used to select the same number of cases where the mother was granted sole custody, and comparisons were made between these two groups.

15. For details of these cases in which matrimonial supervision orders were added at variation see Appendix K.

16. The second case and every following 7th case throughout the year were selected.

1. Proceedings and the Custody Outcomes in the Custody Sample

(i) Custody Outcome: Mother Complainant

	Matrimonial Orders	Guardianship Orders	Total
Custodian Mother	31	13	44
Custodian Father	8	10	18
Total	39	23	62

The mother was the complainant more often than the father, including 18 cases in which she was not given custody of the children. Presumably she expected to be given custody in most cases. However when the father was given custody after the complaint was made by the mother, it was not always clear why she had taken the case to court. Welfare reports were prepared in 9 cases. As the magistrates claimed to order welfare reports in all contested custody cases, it appeared that custody was not at issue in the remaining 9 cases. However 1 split and 1 joint custody order were made, and the children divided between the parents in 1 case. In the remaining 6 cases the mother did not appear to want custody, but perhaps there was some advantage to her in having proof of the separation in tax or welfare benefit terms.

Mothers used matrimonial proceedings more often than guardianship proceedings. This is what one would expect since applications for maintenance for wives can only be made under matrimonial proceedings.

(ii) Custody Outcome: Father Complainant

	Matrimonial Orders	Guardianship Orders	Total
Custodian Father	9	17	26
Custodian Mother	0	0	0
Total	9	17	26

The father was the complainant in 26 cases in which he was granted custody, and in no case in which he was the complainant was the mother given sole custody, although the children were divided between the parents in 1 case. Men used matrimonial proceedings less often than guardianship proceedings, as they do not usually apply for maintenance for themselves from their wives.

2. Children in the Custody Sample

Mothers were given custody of 82 children: 26 girls, 28 boys and 28 children whose gender and age were not known. Thirteen of the boys and 9 of the girls were under 5, and welfare reports were prepared in 5 cases involving 9 young children under 5. Custody was contested in 1 case involving 2 young children, and may have been contested in a further 3 cases involving 5 children. There appeared to be parental agreement about the custody of the remaining 15 children under 5, and the courts endorsed these decisions by giving custody to the mother.

Fathers were given custody of 85 children; 29 girls, 36 boys and 20 whose gender and age were not known. Two of the boys and 4 of the

girls were under 5, and welfare reports were prepared in all 4 cases involving these young children. Custody does not appear to have been contested in any of these cases. The court endorsed the parental decisions that the fathers should have custody of these young children, but in each case welfare reports were prepared before the orders were made.

Slightly more boys were with their fathers than girls, although the gender of 20 of the children with their fathers was not known. Children under 5 were much more likely to be with their mothers.

3. Access in the Custody Sample

When the mother was given custody, access was defined in 2 cases and welfare reports had been prepared in both cases. Access to the father was denied in 2 cases: in 1 case the ground for the order was persistent cruelty, which was admitted by the father, and a welfare report had been prepared; in the second case, the ground was the neglect of the children, which the father denied; but was found proved although there was no welfare report in this case.

When the father was given custody access was defined in 4 cases, following welfare reports in 2 cases. An access condition was added to the order in 1 case after a welfare report had been prepared.

Access was specified in the custody sample in only 9 of the 88 cases examined.

4. Welfare Reports in the Custody Sample

	Reports	No Reports	Total
Custodian Mother			
Mother Complainant	5	39	44
Father Complainant	0	0	0
Custodian Father			
Mother Complainant	9	9	18
Father Complainant	14	12	26
Total	28	60	88

(i) Welfare Reports: Custodian Mothers

Welfare reports were prepared in 5 cases, and the mother was the complainant in each case. Two of the welfare reports were examined, one being a custody report and the other an access report. In 3 cases, welfare reports were prepared but could not be examined. Access was defined in 2 of these cases, and denied in the third case. Thus at least one welfare report was concerned solely with access, and access was presumably at least part of the subject matter of 3 other welfare reports. If magistrates order welfare reports in all contested custody cases, as they claimed, no more than 4 welfare reports could have been ordered because custody was contested, and no more than 3 could have been ordered because of concern about the mother's arrangements for the children.

(ii) Welfare Reports: Custodian Fathers

There were welfare reports prepared in 9 of the cases in which

the mother was the complainant. Four of these welfare reports were examined and found to be custody reports. Of the other 5 cases, the children were divided between the parents in 3 cases; a joint custody order was made in 1 case, with care and control to the father; and a father was cleared of the alleged offence of desertion in the last case and given custody of the children. Custody might have been contested in any of these 5 cases. It is therefore possible that custody was contested in all these 9 cases in which the mother was the complainant, and the father granted custody. It is also possible that the welfare reports were prepared in 5 cases because of concern about the father's arrangements for the children. There was no indication that access was the subject matter of any of the welfare reports.

There were welfare reports prepared in 14 cases in which the father was the complainant. In 10 cases the mother agreed to the guardianship orders being made, so presumably custody was not contested. It is likely that all 10 reports were concerned with the adequacy of the father's arrangements for the children. The one report available for examination fell into this category. In 3 further cases welfare reports were prepared, and matrimonial supervision orders imposed in 2 of them. It is possible that custody was contested in all 3 cases. The imposition of the matrimonial supervision orders points to the possibility that the court was concerned about the arrangements for the children. In the last case, the mother opposed the making of a guardianship order and a welfare report was prepared. Custody was likely to have been contested in this case. It is therefore possible that custody was contested in 4 cases in which the father was the complainant. There is no indication that access was the subject matter of any of these welfare reports. In all probability the majority were concerned with the adequacy of the father's arrangements for the children. Ten welfare reports were almost certainly

of this nature, and there may have been 3 more.

(iii) Welfare Reports in the Custody Sample: Discussion

Welfare reports were prepared before mothers were given custody in relatively few cases - 5/44 (11.4%), whereas before fathers were given custody welfare reports were prepared in 23/44 cases (52.3%). Custody was definitely contested by the father, when the mother was the complainant, in 5 cases, and may have been contested in a further 5 cases. On the other hand, it seemed likely that custody may have been contested by the mother when the father was the complainant in 1 case, and possibly 2 further cases fell into this category. The 10 remaining cases in which welfare reports were prepared were unlikely to have been concerned with a contest over custody. It appeared therefore that custody may have been contested when the mother was the complainant more often than was the case when the father was the complainant.

Custody was awarded to the father in a minimum of 5 contested custody cases, and possibly after 8 further contests. However custody was awarded to the mother in a minimum of 1 contested case, and possibly after 3 more contests. Thus when custody was contested, the father was granted custody more often than the mother.[17]

In undisputed custody cases welfare reports may be requested to ensure that the parent with the children has made adequate arrangements for them. When the father was given custody welfare reports had been prepared in 10 cases that almost certainly fell into this category, and there were a further 8 cases which might have done so. When the mother

17. Maidment (1976:199) concluded that where custody was contested the outcome was entirely unpredictable, and there was no unduly favourable emphasis on the wife's custody.

was given custody only 3 welfare reports could possibly have been of this type. This disparity reflects the concern felt by the courts about the arrangements for the children when the father is the proposed custodian parent. In the vast majority of cases, the mother had looked after the children before the separation, so that her arrangements were long standing. When fathers take responsibility for the children, they often have to introduce new arrangements, while continuing to work. The courts like to be sure that these arrangements are satisfactory before making the custody order, so therefore welfare reports tend to be prepared much more frequently before custody is given to the father than to the mother.

When the mother was given custody a welfare report on access had been prepared in 1 case, and access had very probably formed at least part of the subject matter of the welfare report in 3 other cases. When the father was given custody there was one case in which the welfare report was very likely to have been concerned with access. However, it is possible that access might have been considered in many of the other cases in which welfare reports were prepared before the father was given custody. This could not be checked as most welfare reports were not available. Welfare reports restricted to access considerations are more likely to occur when parents return to court because of access difficulties.

5. Matrimonial Supervision Orders in the Custody Sample

When the mother was given custody there were matrimonial supervision orders imposed on 1 family with 2 children under 5 years. Custody had been contested by the father and a welfare report had been prepared. The Probation Service was the supervising authority. When the father was given custody there were matrimonial supervision orders

imposed on 5 families involving 12 children, 3 of whom were 5 years or under. All the children in the custody of the father were supervised by the Local Authority.

Matrimonial supervision orders were imposed in only 6 of the 88 cases in the custody sample, and fathers were supervised more often than mothers. The basis of the allocation of these orders to either the Probation Service or to Social Services was clearly not based on the age of the child alone, as young children were supervised by both agencies.

D. DISCUSSION

1. Children Orders and Variations

There were 372 children orders made in 1976, 243 under matrimonial proceedings and 129 under guardianship proceedings. During the year 51 variation applications were heard: 18 for custody variation; 27 for access variation; and in 10 cases matrimonial supervision orders were either imposed, transferred or revoked. Four of these matrimonial supervision orders were added when custody variations applications had been heard. The number of variation orders expressed as a percentage of the number of children orders was 13.7%.

2. Custody Orders

Mothers applied for children orders under matrimonial proceedings more often than under guardianship proceedings, whereas fathers applied for these orders under matrimonial proceedings in fewer cases than under guardianship proceedings. Mothers are more likely to

use matrimonial proceedings when they want maintenance for themselves as well as the children. Under guardianship proceedings mothers can only get maintenance for the children. Fathers are unlikely to use matrimonial proceedings in order to get maintenance for themselves. Presumably when they do use these proceedings they wish to show that their spouse has committed a matrimonial offence, in the belief perhaps that the mother will be discredited, thus strengthening their own case for custody. Fathers used guardianship proceedings approximately twice as often as matrimonial proceedings. Presumably they were confident of getting the desired custody order under these proceedings.

In the custody sample mothers were the complainants in 62/88 cases, including 18 cases where the father was given custody of at least 1 child. In every case in which fathers were the complainants, they were given custody of the children, although in 1 case the children were divided between the 2 parents. It seemed that fathers were unlikely to be the complainant unless they had a very strong case for custody. Yet fathers were given actual custody of at least 1 of the children in a further 18 cases when the mothers were the complainants. This suggests that fathers were reluctant to institute custody proceedings in a considerable number of cases in which they had a good case - 18/44 cases. Presumably the fathers were not prepared to risk the possibility that the court might give custody of the children to the mothers. Unfortunately the records do not show where the children were living at the time of the court hearing, so it was not known whether the court order confirmed the status quo or not. It may be that parents and solicitors are under the impression that custody is given to fathers less often than is the case.

When custody variations were made mothers failed in their applications for a transfer of custody in 3 of their 9 applications,

whereas fathers were successful in all 6 applications. There were 3 cases where a child of 12 or over was transferred to the custody of the father with the mother's consent, leaving younger children with the mother. There was only one case in which older children were transferred from the custody of the father to the mother, with the father's consent, leaving younger children with the father. The net effect of the custody variations was that more children lived with their fathers, but more boys were affected than girls. The failures of the mothers to get a transfer of custody in 3 cases suggested that mothers expected to be given custody and made applications when their cases were not strong, whereas fathers only applied for custody when they had a convincing case. Most of the custody variation applications were made fairly soon after the original orders were made, including 8 within the first year.

3. Access Orders

The usual practice was for "reasonable access" to be ordered to the non-custodian parent when the initial order was made. In the few cases where access was defined when the initial order was made (12 cases), and when access was defined when an order was varied (23 cases), the most usual order was for a weekly visit.

The father's access was defined more often than the mother's. Of the defined access orders and variations, fathers had custody in 7 of the 35 cases (20%), whereas mothers had custody in 28 of the 35 cases (80%). The father's access to older girls was more likely to be defined than his access to older boys.

Defined access included staying access in 13 of the 35 cases.

When staying access was with the mother, there were 5 children involved, and their ages were not stated. When staying access was with the father, there were at least 14 children involved, and 8 of these were known to be 5 years or less.

There was no case in which the mother was refused access by the court. The father was refused in 2 cases when the initial order was made, and in 4 cases where orders were varied; welfare reports were prepared in 5 of these 6 cases.

Access variation orders were made over a number of years after the original orders were made.

4. Welfare Reports

It was possible to estimate the usual number of welfare reports prepared when applications for children orders were heard from the number of welfare reports prepared in the custody sample and the number of orders made in 1976. Fathers were given actual custody of at least one of the children in 44 of the 372 orders, i.e. approximately 1/10 cases, and welfare reports were prepared in about half of these - 23/44. Where mothers were given custody, welfare reports had been prepared in 5 of the 44 custody sample cases, 11.4%. For every 100 cases, therefore, welfare reports had been prepared in approximately 15% of cases (5/10 cases before fathers were given custody and 10/90 cases before mothers were given custody).

Welfare reports were prepared more often than this in certain circumstances:

1. When joint custody orders were made, or custody was given to a person other than a parent or when the children were divided between the 2 parents, welfare reports were prepared in 60% of cases.

2. When custody variations were made, welfare reports were prepared in 8/18 cases (44.4%), and the parties consented to the order in all cases in which no welfare report was prepared.

3. When access was specified, welfare reports were prepared in 10/18 cases when the initial orders were made (55.6%), and in 22/27 cases when orders were varied (81.5%).

4. When matrimonial supervision orders were made, welfare reports were prepared in all cases when the original orders were made, and in 8/10 cases when children orders were varied (80%).

5. The magistrates and court clerks claimed that welfare reports were always prepared when custody was contested.[18]

6. As already stated, welfare reports were prepared in approximately half of the cases in which fathers were given actual custody of at least one child.

When the children concerned were found to be under 5 years (6 children), welfare reports were prepared in every case, in spite of the fact that the mothers had consented to the orders in every case. The fathers' arrangements for the children were the subject of the welfare reports in at least 10 and possibly in as many as 18 cases.

5. Matrimonial Supervision Orders

Matrimonial supervision orders were used infrequently in the

18. See Chapter 7 for the account of the practices of magistrates and court clerks..

Domestic Court. Of the 423 children orders made and varied in 1976, there were matrimonial supervision orders imposed on 15 families (3.5%).

The basis of the allocation of the matrimonial supervision orders in the Domestic Court was not apparent. Age was not the criterion as some of the cases supervised by both the Probation Service and the Local Authority included young children. In all the cases where the father was given custody when the initial order was made, the Local Authority was the supervising agency. Young children of 5 or under were known to be involved in 2 of the 5 cases. When the mother was given custody, the Local Authority was the supervising agency in 2 cases, and the Probation Service in 3 cases, including 2 cases involving children of 5 or under. The reason for the use of supervision orders when the initial orders were made was probably supportive in most cases, but supervised access had been ordered in 1 case, and at least 2 orders were made following custody contests.

Matrimonial supervision orders were more likely to be imposed when the father had custody than the mother. In 1976 the same number of orders was added when the mother or the father was given custody when the initial order was made (5 cases each), but mothers were given custody 10 times more frequently than fathers.

In all 4 cases in which matrimonial supervision orders were added at variation, the father was the custodian parent. In one case the father succeeded in his application to have custody transferred from the mother, and in 3 cases the mother failed in her application to have custody transferred from the father. Access to the mother had been defined in 2 cases when the original orders were made. The purposes

of these orders may have been related to a high level of contention between the parties, rather than to supporting the custodian fathers. In 2 cases unsuccessful applications had been made by the mother to vary the orders before the 1976 hearings. No welfare reports were available, so the reasons for the orders could not be ascertained. The time between the original order and the 1976 variation was 3 years in 1 case, and 1 year in the other 3 cases.

The Probation Service returned to court with 6 matrimonial supervision orders in 1976, whereas the Local Authority social services did not return to court with any cases. This could have been a random finding, but the interviews with social workers brought to light their low level of familiarity with matrimonial and guardianship legislation, and their hesitation to return to court to have matrimonial supervision orders revoked.

E. COMPARISONS WITH THE RESULTS OF THE OXFORD STUDY

The results of the examination of the records of the magistrates' court in this study were compared with the results from the divorce courts in England and Wales examined by Eekelaar et al (1977).

1. Custody

Mothers and fathers were granted custody in approximately the same percentage of cases in both studies, although fewer orders were made in the magistrates' court for joint custody, third party custody, or divided custody with one or more siblings living with each party.

It was not possible to calculate the number of contested

custody cases from the records of the magistrates' court, but it appeared that custody may have been contested by the father when the mother was the complainant more often than was the case when the father was the complainant. This finding differs from that of the Oxford Study, which reported that women were more likely to contest custody than men. It also appeared from the records that when custody was contested, the father was slightly more likely to be granted custody than the mother. The custody sample suggested that slightly more boys than girls may have been in the custody of their fathers, but the gender of a number of children was not stated. Children under 5 were more likely to be with their mothers. Similar findings were reported in the Oxford study.

2. Access

The records showed that in the vast majority of cases reasonable access was ordered to the non-custodian parent when the original order was made. Access disputes were the reason for approximately half of the variation hearings, as the Oxford study suspected. Mothers disputed access, and defined orders were made in 80% of the variation hearings over access. The Oxford study had shown that mothers were the custodian parent in 5/6 of the contested access cases. Disputes over access returned to court over a number of years, confirming the Oxford study's impression that access disputes may continue for a long time.

In no case was there a failure to mention access, as reported by the Oxford study in a considerable number of divorce court orders. The application forms for matrimonial and guardianship orders and variations provide spaces for the access clause desired by the petitioner to be specified, whereas the application forms for divorce do not do so.

The Oxford study suggested that the type of order forms used in the two courts may have been the explanation for the relatively smaller number of access orders at divorce.

3. Welfare Reports

Welfare reports were prepared in approximately 15% of cases in this study, which falls within the Oxford study's range of figures for the number of welfare reports available in the divorce courts examined. A marked difference was observed in this study between the percentage of proposed custodian fathers investigated by welfare reports, and the percentage of proposed mothers investigated. This finding agrees with that of the Oxford study (para. 4.4.) which found that welfare reports were prepared about twice as often before fathers were granted custody. Frequent welfare report investigations were found in both studies when children were divided between the parties, and when custody was awarded jointly to the parties, or to a third party.

4. Matrimonial Supervision Orders

Matrimonial supervision orders were used as infrequently in this study as in the Oxford study. It was not possible to state the relationship between the readiness of the reporting officer to recommend supervision and the number of orders made, as the welfare reports were not available for examination. However the interviews with magistrates and judges supported this connection observed by the Oxford study.

5. Conclusions

Certain comparisons could not be made between the two studies, e.g. the access practices of the parties at the time of the hearings in the magistrates' court were not known. However it appeared that the types of orders made in both courts were not dissimilar, nor their use of welfare services for reports and supervision. Magistrates appeared less inclined to make certain types of custody orders such as orders dividing children, and joint and third party custody orders, and used welfare reports more often before granting custody to fathers. However, the divorce court has more information from other sources; affidavits and Children Appointments. It was curious that custody appeared to have been contested more often by fathers in this study, but the numbers of such cases were limited. The records examined do not suggest that there are any major differences between the practices of the two types of courts, other than the absence of access orders in a number of divorce court orders. For the purposes of this study, it will be assumed that the facilities offered by both courts in the city were similar and do not vary markedly from the practices of courts in the country as a whole.

CHAPTER 7 : THE MAGISTRATES' COURT

A. COURT CLERKS AND MAGISTRATES

The data for this chapter was collected by interviewing magistrates and court clerks as described in Chapter 1. Although there is a separation in the magistrates' court between the adjudicators - the magistrates, and the experts on law - the court clerks, the dividing line was not always clear. The court clerks conduct the hearings; advise and assist unrepresented parties; and advise and assist the magistrates. The magistrates frequently retired before reaching a decision and requested the presence of the court clerk while they deliberated. Some magistrates constantly called the court clerk across to their bench to ask his advice. Normally solicitors ask the court to order welfare reports when custody is contested. If the magistrates fail to order welfare reports in cases where the court clerk considers them to be appropriate, he might suggest this course of action to them. Thus the court clerks frequently "lead" the magistrates and probably influenced the outcome in a number of cases.

The basic concern of the magistrates' court is with maintenance, according to 2 court clerks. The procedure for parties applying for maintenance is described in Chapter 2. A maintenance order for a child can only be made in favour of a party who has been granted legal custody.[1] In most cases the parties agree that the children should remain with one of them, and 2 court clerks remarked that disputes about custody were rare. The court usually endorses the wishes of the parents with regard to custody, and makes the maintenance order.

The magistrates were asked whether they thought that it was

1. See the relevant legislation in Chapter 2.

better for the children, when a marriage was unhappy, that the parents should stay together or separate. Four of the six magistrates were in favour of the marriage ending. One thought that couples were too quick to split up and should try harder to sort out their differences, while another said that they should stay together "unless it was just too awful".

Two of the 12 court clerks spoke of the possibility of reconciliation. One regretted the decline in the Probation Service's work in this area, and considered that officers could help more if they were called on earlier in the dispute. The other pointed to the difficulty of obtaining a reconciliation if there had been "any airing of their dirty linen in public". In her view this was seldom done these days, and people were generally pretty reasonable.

B. CUSTODY

1. The Maternal Presumption

The court clerks were more or less equally divided on the question of whether or not there was a maternal presumption in custody cases. One made the distinction between the law on the matter, where there was no presumption, and the practice of the courts, where there was. It was not always clear what was understood by the term "maternal presumption". Two of the court clerks who said that there was no maternal presumption, went on to say that it was the accepted view that mothers should have custody. This could have meant that the layman mistakenly thinks that the mother has a better chance of getting custody, but one of these two court clerks added that all things being equal magistrates tended to favour mothers getting custody. However, he also added that

mothers were not more likely to be good parents than fathers. This court clerk was not alone in saying that magistrates tended to favour mothers, all things being equal; about half of the court clerks thought that this was the case. These court clerks were equally divided in their statements about the existence of a maternal presumption. Finally, the court clerks were asked whether the father in a contested custody case had to persuade the court not only that he was a suitable parent to have custody, but also that the mother was unsuitable; whereas the mother had only to show her suitability. About twice as many court clerks thought that the father had the double task and the mother the single task, as thought that both parents had the same task. It is difficult to know what to make of these replies.

The magistrates were less ambiguous with their replies. All of them agreed that the mother should normally have custody and 4 of the 6 went on to say that the father should only have custody when the mother was inadequate. Half of the magistrates thought that the father had to show that the mother was inadequate before his claims would be considered. No one interviewed thought that the mother had to show that the father was an unsuitable parent before her suitability for having custody would be considered. It seems that although the magistrates and clerks are aware that the maternal presumption is not supposed to exist, in practice they find it difficult not to apply it.

2. Considerations in Custody Decisions

The age and to some extent the sex of the child was considered to have a bearing on who should get custody. Four court clerks considered that very young children were better with the mother provided she was not

shown to be unsuitable. Three court clerks thought that children under 10 got more from being with their mothers whereas children over 10 were better with their fathers. Two court clerks said that girls were better off with their mothers whereas older boys should be with their fathers when possible. Only one magistrate made any comment about the age or sex of the child and custody; she considered that older boys might be better off with their fathers.

A number of court clerks stated that the wishes of older children were taken into account when custody was decided, and children of about 14 might be called to give evidence in court. Under this age, the probation officer would be expected to find out the child's preference, and the officer would decide how much weight to give to the child's wishes in the welfare report.

The court clerks were anxious to see that the child's life retained continuity. The discontinuity associated with moving a child meant that the parent with whom the child was living at the time of the hearing had a distinct advantage in contested custody cases. All but one magistrate agreed that the status quo was a very important consideration. One magistrate did not consider that the parent with the child had any advantage.[2]

The question of work is of some importance in custody cases because of its bearing on the suitability of the arrangements for the children. All the court clerks agreed that a working mother seeking custody would not be at a disadvantage, although two of them preferred the mother to remain at home with the children, and most of them said they would expect the mother to remain at home if the children were small.

2. It is quite clear from the studies of Maidment (1976) and the Oxford study (1977) that the status quo is a very important consideration, if not the single most important factor in custody determinations.

A mother living on social security would not be at a disadvantage. A man who was not at work was regarded with suspicion by most of the clerks. One court clerk was quite clear that men had to work, and another stated that the man's role was to support his family. If a man deliberately gave up his job in order to look after small children, provided he was not "skiving", this was considered by one court clerk to show his concern for the children and would not be a disadvantage. Such a man was not to be condemned as such, said one court clerk, but was nevertheless very ill-advised to act in this way, and ought to work and pay someone to look after the children. A working mother would be at a disadvantage if the father was at home, said 3 court clerks, and whichever parent was at home with the children was in a stronger position in the custody dispute. None of the court clerks thought that the father would be at a disadvantage because he was on social security. The magistrates were less tolerant of a man who was not at work. Four of the 6 said that they would not like to see the father give up his job to look after the children although the other 2 thought that the man would not be disadvantaged on that account. One magistrate said that she would not hold it against a man who was unemployed as a result of the present economic situation. Only one court clerk thought that the economically stronger parent would be in a better position in the custody dispute and another remarked that love and care are more important than money. One magistrate said that she was not adversely influenced by the poverty of the home provided it was clean. Another pointed out that the clientele of the magistrates' court were rarely well off, and questions of affluence did not arise. It was noticeable that when the mother was under consideration, a mother at work was discussed in terms of disadvantages, whereas a mother at home was discussed in terms of the advantages of this arrangement. When the father was under consideration, a father at work was discussed in terms of advantages, whereas a father at home was discussed in terms of

disadvantages.

The court clerks did not consider that a single parent applying for custody was at a disadvantage compared with a parent who had another partner. The cases heard in the magistrates' court were usually heard sufficiently soon after the breakup for most parents to be alone. Two of the magistrates did not think of a new partner as an advantage and were clearly influenced by cases such as Maria Colwell* (Report of Committee of Inquiry, 1974). The other 4 magistrates said that they would prefer a 2-parent family provided the new partner was a good parent and the relationship was a stable one, and one magistrate thought that a child brought up in a one-parent family was at a disadvantage compared to children brought up in a 2-parent family. This magistrate had been brought up by a single parent, and had missed a father figure. She contrasted her own childhood with that of her children, to whom their father was a very important figure. Many of those interviewed said that it was impossible to generalise about the effect of a new partner on the custody decision, as each case would have to be considered on its own merit. However, it is true to say that a satisfactory new partner for a father would assist his case if it made his arrangements for the children more satisfactory, i.e. if his new partner stayed at home with the children, or was available to collect them after school, and look after them when they were ill and during the holidays. It was these kinds of arrangements that the magistrates were most anxious to know about.

Certain practices of some parents were seen as disadvantageous. A parent with a history of violence or drunkenness was at a disadvantage. One court clerk did not distinguish between prostitution and promiscuity. The promiscuity of either parent was considered a disadvantage by the court clerks, although 3 of them thought that it would only be a

* Maria was killed by her step-father.

disadvantage if the children were upset or damaged by it. This was the position adopted by the magistrates too. Only one magistrate thought that promiscuity would necessarily be a disadvantage; the rest considered that evidence of adverse effects on the children would have to be presented.

None of the court clerks or magistrates had experience of a homosexual parent applying for custody. However, 8 court clerks considered that the homosexuality of either parent would be a disadvantage, and only one court clerk considered that a lesbian mother would have no more difficulty in getting custody than a heterosexual mother. Homosexuality was said by 4 court clerks to be contrary to the dignity of the family, which was based on the heterosexuality of the union, and 4 of the 12 court clerks stated that in their view homosexuality was a perversion. Two of the magistrates considered that homosexuality might be a problem, but one said that it would not make any difference at all to her. Other disadvantageous characteristics of parents seeking custody which magistrates enumerated were: parents on drugs; parents of low mentality; and parents with psychiatric disorders. Two of the court clerks considered that a father who was not married to the mother of the children was not necessarily at a disadvantage when applying for custody. If the couple had lived together as man and wife, then there was no difference between the pair, and the decision would be made on the same considerations as would prevail with a married couple.

3. Joint and Split Custody

None of court clerks had much experience of joint custody orders, and none of the magistrates had ever ordered one. The court

clerks disagreed on the sort of case where this type of order was indicated. Four of them thought that the order was only appropriate when the parents were ready to co-operate over the children, and these cases were marked by the agreement of the parties. But 2 court clerks said that this type of order would only be used if there was conflict over custody and the parents were bickering, and both expressed their dislike of these orders. Finally, one court clerk thought that if the children were teenagers, then a joint order might be appropriate. The magistrates, on the other hand, were unanimous in thinking that a joint custody order would only be appropriate when the parties were able to co-operate together over the children. Split orders, with custody to one party and care and control to another, were also very rare, and no magistrates reported ever having imposed one. One of the court clerks thought that such orders were always problematical, and another said that he disliked them. Yet another court clerk thought that these orders were rare in the Magistrates' Court because they were really only appropriate when there was a question of private education.

C. ACCESS

Both court clerks and magistrates agreed that there was a presumption in favour of access, and that access would be ordered unless there were very good reasons for refusing it. One magistrate emphasised the necessity for good will on both sides if access was to work out satisfactorily. The general opinion was that usually access worked out well, although 2 magistrates pointed out that they had no means of knowing the effect of their orders, and this information would be most helpful. However, the assumption was that things worked out, as relatively few cases returned to the court for the variation of the access order. Four magistrates thought that it was worth while for the non-custodian parent to return to court if there was a problem over access; one said that a

return to court ought to be avoided if at all possible; and one said that it should be the last resort of the visiting parent:

> I think that probably the court is the last resort in access disputes. Certainly the welfare agencies and even relatives should be brought in to try to knock some sense into the two parties. No matter how often you tell the parents in court that it is for the welfare of the children, all that they can think of is the past conduct. I think that all other channels ought to be tried before the case is brought back to court. Courts are not the proper place - but what is the alternative?

1. Access Rights and the Purpose of Access

There was a gradation of opinion on the question of whose was the right of access, and what was its purpose:

> We are intervening here in the usual domestic relationship and we are saying that the parent who hadn't got custody should be given the right to continue to see the child, not because we see that anything beneficial or any good things will come from it, but because to look at it the other way, you would be denying that parent a right. In the present state of understanding of what can be gained and what cannot be gained from access, I think that it would be a very bold person indeed who would stand up and say that they think that access should be done away with, unless it could be shown that to do so would be beneficial to the child. To do that would be to remove from one of the parents the rights that society is prepared to extend to him in relation to the children.

This court clerk was the least experienced one interviewed. However, he was not alone in discussing access in terms of the right of the non-custodian parent:

> The access is to the father and fathers have rights of access. The access may not always benefit the child, but you can't deny the father access because it does not benefit the child. As long as no harm is coming to the child, this is all right. I think that access stems from the right of the father rather than something that has been instituted for the benefit of the child.

Another court clerk, who expressed himself in terms of the right of the visiting parent, presented a more child-oriented position:

> I would say that access is the right of the non-custodian parent. I would see it usually as being in the interests of the child. The right and wishes of the father or the mother as far as both custody or access are concerned do not come top of the list. The purpose of access is to provide the influence of both parents, even though the child is living with one; even if each has a new partner, but depending on the age of the child. If the child has known the other parent I would think that the fact that the non-custodian parent keeps in contact and is known to the child is important for that child. If we are talking about a baby of about 3 months when the breakup occurred, perhaps there would not be any access and it would not be any great loss, particularly if a new father had come on the scene.

The position of this court clerk is not very different from those who considered access to be the right of the child:

> It is the right of the child to see the parent who has not got

> custody. I think that it is often looked at from the other side - that it is the parent's right to see the child - but that is not right at all. It is to try to keep the child's relationship with his or her father or mother even though they are separated, and especially if the parent they are living with has not remarried. If the mother has not remarried, the children are left without a male figure. I think access is very important in those circumstances. Even if the mother has remarried, the father is still the natural father and ought to have access to the child.

The importance of the absent parent as a gender model was also mentioned by one magistrate.

The magistrates expressed the view that the right of access belonged to the non-custodian parent:

> I think it is important that the father or mother sees the child. I think that it is only fair that the non-custodian parent does see the children - that he sees them growing up.

However, one magistrate, while talking in terms of the right of the non-custodian parent, saw access very much in relation to the benefit of the child:

> I consider that the non-custodian parent has the right of access in order to keep in touch with the children. I think of it entirely in terms of the children. The right of the non-custodian parent is dependent on the benefit of the child.....The purpose of access is that the children will have some knowledge of the other parent. I think that this is very important. And I think that from the point of view of the parent, having access gives them some idea of their responsibility.

Frequently access was seen as an important means of continuing the existing relationship between the child and the non-custodian parent. One magistrate stressed the importance to both the child and the absent parent, of building up a continuous relationship over time. Access was seen as important from the child's point of view, in that it enabled the child to see the absent parent and to know that parent. One of the court clerks considered that a visiting father was often a better father than he had been when the parents were together because his full attention was given to seeing to the children's needs during access. The general view was that access was beneficial to the child. However, 3 magistrates expressed concern about the value of some of the access that took place, although they all agreed that they would have to grant it. Two of these magistrates were doctors who had experiences of the after effects of access in their medical practice. The difficulties resulting from access will be discussed later.

2. How much Access?

The clerks were asked how much access was required, in their opinion, in order to fulfil the purposes of access as they saw them. This is the way one court clerk replied:

> Courts do not consider that it is their duty to encourage longer access than the parties request. Magistrates do not think of this. I have never considered the appropriateness of the length of the access period and the frequency of access in relation to its purpose. I do not think that other clerks would have considered the matter in this way either. It is clearly something that we ought to do, but I have never thought of it.

This court clerk had worked in the Domestic Court for 17 years.

The court clerks and magistrates were generally agreed that younger children needed more frequent access than older children, but that the visits could be kept fairly short, say 1 - 2 hours once or twice a week. For older children, it was important that there was a fairly long period of time spent with the non-custodian parent, say 6 hours; although frequent visits were not thought necessary. The court clerks and magistrates considered one visit per week to be the norm, usually on a Saturday or a Sunday. One thought that an evening visit during the week would be a useful addition.

Six court clerks and one magistrate remarked on the limitations of the "Saturday type" access when the child was taken out for a few hours for a treat, but another court clerk considered that it might be useful as an interim arrangement leading to more frequent and satisfactory access later. The artificiality of such contact between the child and the parent was one of the main criticisms of this type of access as the visiting parent was merely entertaining the child, and not performing a parenting role. However, with babies and very young children, an afternoon when the father took the children to the park for a few hours was seen as appropriate and adequate.

3. Access Orders

The usual practice is that when the initial order is made, reasonable access is granted to the non-custodian parent, and all the court clerks and 5 of the 6 magistrates thought that this was the right way to deal with the situation:

> Usually when we make an order, we order reasonable access. If there are disputes over access at the time of the first hearing,

> and the parties are represented, we would ask the parties whether it is a matter which could be resolved between them. We would be saying that we hope it can and we would go ahead and make an order for reasonable access.

The court clerks and magistrates showed a marked reluctance to interfere in the access arrangements between the parties, and preferred to leave these arrangements to the parties to work out for themselves:

> I would not recommend that access be longer or shorter than the parents suggest. I would leave it to them really. You do not go into it all that much.

It was clear from the replies of court clerks and magistrates that access is usually defined within the parameters set by the parties or their representatives. One court clerk said that he thought that courts erred on the side of longer access; when 2 proposals were made to the court, the court was likely to favour the one which asked for more access rather than less. The parties were not questioned as to what access they considered to be reasonable:

> I think that in some cases the non-custodian parent does not wish to have a great deal of access. I think that a little bit more time could be spent by the court finding out why.

One magistrate said that the arrangements should be reasonable in the child's terms, and another that these arrangements ought to take the child's interests into account. But the general view seemed to be that the arrangements ought to be suitable for the parents, and one magistrate considered that an arrangement that suited the parents would also suit the children. Only one magistrate objected to reasonable access orders:

I think that I would like to see access defined when the original order was made because I think that the term reasonable is very vague indeed, and I think that a custodian parent might think that one hour a week or even a fortnight was reasonable. It might even be reasonable to the non-custodian parent, but I don't think that it is reasonable to the child; I think it could be very traumatic for the child .... I think that if you don't define the access then the amount of access to the non-custodian parent tends to get gradually whittled away, but I think that the caring non-custodian parent really likes to know what his or her rights are. Of course, they can bring the case back to court. I think that the caring father will want all the access that is available to him. If he thinks that this may not be given to him by the mother then I think he would be happier if it was defined, and I think it is for the benefit of the child too.

In general defined access was seen as a compromise when the parties were unable to reach amicable arrangements on their own, although the principle of access might not be opposed. This order was disliked by all but the magistrate quoted above. One court clerk described it as "better than nothing". The most frequent criticism of defined access orders was its inflexibility:

Now personally, I don't believe in specific access. It is all very well saying to someone you can see your child every Saturday afternoon between the hours of 2.00 p.m. and 4.00 p.m. You have suddenly got a bus strike, or the father is ill for a fortnight, and yet the only time that he can see that child is at the specified time on a Saturday. He loses access completely for two whole weeks.... And I think that specific access is a bit hard on

the child as well. With specific access, the child has got to go to the parent on that particular afternoon. I do not like the inflexibility of it. If the child is ill on that Saturday, then technically the father should not see that child until the following Saturday. Now is it fair that he should not see the child?

Staying access, i.e. overnight visits with the non-custodian parent, covers both weekends and holidays. The general view was that staying access was a good practice except where very young children were concerned. One court clerk thought that without staying access it would be unlikely that the bond of affection between a child and the absent parent could be preserved. But there were one or two voices raised against it:

For the father to take the child away for a week or a fortnight, well, when I was a child, I don't think I would have liked to have gone away with someone who I did not see regularly. I don't know how it affects the child. If mother is the type who can't take them away, and father does, then that is very nice. But then you get all that trouble when the father kidnaps the child.

Another court clerk also mentioned kidnapping as one of the problems associated with staying access.

A different fear in relation to staying access was related by one of the medical magistrates:

I rather like staying access. But I think that the anxiety to a caring custodian mother for her daughter to have staying access in the later puberty years is a worry to some women. And I am horrified to hear from my lady partner and from the health visitor

> the complications of father-child relationships. This might occur when the father had not re-married and was alone in the house with his daughter. I am very concerned about this. I have never mentioned it in a court situation because I have never been confronted with it. But I am quite surprised at what my partner, the health visitor and district nurse tell me. Even if there is no incest, there is some kind of abnormal relationship.

One magistrate thought that staying access was appropriate only when the non-custodian parent lived a long way away.

4. Problems of Access

The non-custodian parent may return to court if he or she is experiencing any sort of access difficulty, and particularly if the custodian parent is denying access. Complaints made by non-custodian parents in court included the lack of co-operation of the custodian parent in making the access arrangements and in keeping to them; and the custodian parent moving and thus making access difficult.[3]

The complaints that custodian parents made in court were very varied: a common criticism was that the access was used to give the child treats that the custodian parent could not afford; the child might be kidnapped during access; and visits by the non-custodian parent to babies and very young children were unnecessary. The court clerks and magistrates were asked specifically about access to babies born after the separation of the parents:

3. In some states of America there are provisions which prohibit the custodian parent from moving to another state because it interferes with the non-custodian parent's access (Bodenheimer, 1978)

> I am very doubtful if access ought to take place. But I suppose that if it is asked for, one would have to give it. I would hesitate. I would want to know the whole background. You get quite a number of people who visit out of spite.

> I have never come across a case where the parents separated before the child was born. Unless the father was very keen, and I don't think that many men have that sort of paternal feeling before the child is born, I think that it would be better if there was no access. But if the father wanted it, then he must have it. He must have consideration. It would depend on whether the parents knew each other for a long period, and whether there were other brothers and sisters. If there were no other brothers and sisters I would not be too keen on granting it, because I think that the father would just be trying to get back at his wife.... I don't think that if it was an only child the father would be so much concerned.

None of those interviewed had come across a case where the child was born after the separation but all agreed that access to babies and very young children would have to be granted if the non-custodian parent wanted it.

Another common complaint of the custodian parent in court was that the child was seeing the new partner of the non-custodian parent. One magistrate added that access could be defined in these cases so that the child did not see the partner of the non-custodian parent. Difficulties sometimes came to court after the remarriage of either party especially if further children were born. Four magistrates emphasised that if access had been satisfactory, the remarriage of the non-custodian was no reason for discontinuing the access. The custodian parent sometimes

wanted to end the access when she or he remarried. One magistrate said:

> There are cases where access works out well after the remarriage of the custodian parent. But I think that if it is going to lead to friction for the child, if the custodian parent is very much against it, then possibly it is better if it ends.

The continuation of access gave rise to difficulties for some step-parents, particularly in relation to discipline. One court clerk considered that the step-father would not be able to exercise control over the children if the natural father was visiting:

> I don't know how a second father can have any authority at all. I think that is why you get all these problems with youngsters going haywire at about 14, 15 and 16. They are not going to be told what to do by someone who is not their parent.... I think it is very difficult for both the wife and the child. Who does the child look towards? If he does not like his new step-father, it is all going to be his first daddy. If it is the other way around, it is going to be his new step-father and not his daddy. One is going to tell him one thing and the other another. They are going to play one off against the other.

Squabbles over the time of visits and other niggling disagreements were seen by the court clerks and magistrates as evidence of immaturity on the part of the parents and came within their recommendation to the parties to be reasonable. The court usually did not define access when there were petty disagreements but told the parties to go away and work out reasonable arrangements in the interests of the children.

A difficulty which was voiced frequently by court clerks and magistrates was that access might result in the children being used by the 2 parents, either as a means of continuing the battle that ended the marriage, or as a means of finding out about the life of the other parent; the children might be grilled during the access by the non-custodian parent, and after the access by the custodian parent; parents might attempt to poison the children against the other parent, or try to win the children over to their side. Divided loyalty of the children was seen as one of the possible dangers of allowing access to take place. The children themselves were thought to use the separation to play off one parent against the other for their own advantage.

One court clerk and 2 magistrates referred to the non-exercise of access:

> I think that you will find that with many of the people who come to this court access is a mere formality; it is never taken up at all.

The court does not ascertain whether fathers intend to visit their children, and if not, why not.

5. Refusal of Access by the Court

The refusal of access by the court was a rare event according to all the court clerks, and all but one magistrate had never refused access in court. The court clerks and magistrates considered however that the refusal by the court would be justified in certain circumstances. A frequently used justification was the unsuitability of the non-custodian parent. Many of the factors mentioned were similar to the reasons given

for excluding a parent from having custody; a parent who visited the children while under the influence of drink or who had used violence on the children might be refused. One court clerk had this to say about violent parents:

> I would consider a man to be an unsuitable parent for access if he was coming home drunk and generally abusing them (the children); hitting them about. But even then, he could come home in a sober state and he could have access under the supervision of someone. I don't think that any father or mother should be deprived of seeing their children if they want to see them.

Such extreme reluctance to refuse access was not apparent in the statements of the other court clerks and magistrates. Other factors which might justify the refusal of access included criminal tendencies and psychiatric disorders. It was not unusual for the inadequacies of the absent parent to be coupled with the effect on the child if access were to take place. Two court clerks stated that an unreliable non-custodian parent who sometimes did not turn up could be refused access if it was shown that this had an adverse effect on the child.

Homosexuality was not considered a sufficient ground for refusing access; there had to be in addition the likely possibility of damage to the child. However, 5 of the 12 court clerks voiced their fears that a boy might be influenced by his father and thereby perverted. One court clerk expressed a contradictory opinion:

> I do not think that a father's homosexuality would make any difference. After all, presumably he was a homosexual when the parties were living together, and if it did not cause any damage then, I don't see why it should make any difference now.

This degree of acceptability was not shared by the others interviewed. A typical response was as follows:

> Homosexual fathers might have difficulty in getting access to their sons. I suppose the immediate reaction would be a bias against it but unless there was evidence of harm to the child from access, there is no reason for the court to deny it.

Promiscuity was also regarded with some apprehension, but only if it were shown to be damaging to the children would there be any question of the court refusing access.

The general view was that a father who was not married to the mother of the child would not be denied access on that account.

An irreproachable parent could be refused access by the court if that access was shown to have an adverse effect on the child. One circumstance which a number of those interviewed mentioned was when both parents were extremely antagonistic towards each other. One magistrate thought that access was always bad for the child when the parents were at loggerheads. The strain on the children was thought to outweigh any benefit or pleasure that the child might derive from the access:

> I think that it would be reasonable to refuse access if there was a great deal of trauma between the two parties involving the child. Then I think that the child would be better getting a stable relationship with one parent, and knowing that neither was going to take reprisals against him.

It is clear that the courts do not refuse access often, and indeed they are very disturbed when an occasion arises when they feel

that they must refuse a non-custodian parent who is anxious to visit. One court clerk said the following:

> In court today, we had a case in which we eventually decided to refuse access to the non-custodian parent, the father. The case took many hours to decide. It was the most difficult case that I have had to deal with in my time as clerk (17 years). The magistrates in the case also were very agonised over the decision.

6. Refusal of Access by the Child

> If a child is old enough to know its own mind, then it should be given the opportunity to decide whether to see the non-custodian parent or not.

This statement by one of the court clerks was not accompanied by any indication as to the age that the child would have to be in order to be allowed to decide for himself with regard to access. Another court clerk spoke of the inability of the court to go against the wishes of an older child who refused access:

> If you have an older child, say 14 - 15, who is called to give evidence and says that he does not want to see the other parent, there is very little that the court can do. You might as well refuse access in those cases.

Another court clerk remarked:

> If the court is convinced that the child does not want to see the parent, then they would order no access.

Earlier in the interview, this court clerk had stated that he expected the

probation officers to find out the views of the child in this respect. When asked whether children necessarily know what is good for them, he said that he assumed that if a child refused access, then access would be detrimental to that child. "To actually force a child to go somewhere it does not want to go is going to have harmful effects", he said.

The court does not necessarily follow the wishes of the child in respect of access however. One court clerk said:

> If the child does not want to see the non-custodian parent and has decided on its own not to see this parent, perhaps because it blames that parent for leaving, we might order access if we thought that it was good for the child. In the end, we have to do whatever the magistrates think is best for the child.

This point was made by other court clerks and one elaborated on how the courts would assess what was best for the child:

> With younger children, you look for evidence that access by the parent is causing the child to be ill, or the child is getting so upset that his school work is suffering, or something like that. But it is more the effect of the visit on the child, rather than looking at the parent who is visiting and saying that there is something wrong with that parent. It is more the effect of the access on the child.

The validity of the refusal of access by some older children was discussed by one court clerk:

> We have come across a few cases where the older child in particular was very bitter at the separation, and the child refused to see the father, perhaps because the child was bitter at the way the father

had treated the mother. The father might be genuinely very fond of the child and wish to see the child. I don't think that there is anything that we can do in those cases.

Other court clerks took the view that if a child refused access, often the influence of the custodian parent was behind the refusal. The impossibility of doing anything with the parent who insists on poisoning the child against the absent parent was discussed by one court clerk:

> When reports are ordered, we are looking to see if one side is being particularly unreasonable, and what effect this is having on the child. I can remember one particularly depressing case where the mother had filled the child's head with so much against the father - a lot of it wrong - that the child just did not want to see the father. Every time the father called to see the child, the mother used to turn him away and say that the child did not wish to see him. The access was deleted for the time being because the child was fairly young and had been turned so much against the father that to have forced that child to see the father would have made the situation even worse.

Three of the 6 magistrates had never experienced a child refusing access but one had come across a case where the probation officer reported that the child did not want to see the absent parent. Another magistrate repeated the point made by the court clerks that a child of 15 or so would be old enough to decide about visits.

7. Refusal of Access by the Custodian Parent

The view of the court clerks and magistrates that the custodian

parent may influence the child to refuse access has been mentioned. A custodian parent who is determined that access shall not take place, and persuades the child that he/she does not want access, makes the situation very difficult, if not impossible, for the court to settle:

> When the custodian parent refuses to allow access, there is power to commit to prison, but you should not do this. I have never known that power to be exercised. In the last resort, the court is powerless if the custodian parent refuses. The non-custodian parent could make an application for the transfer of custody on the ground that the other parent was not a good parent if he or she denied access to the absent fit parent.

Another court clerk remarked:

> The question of the custodian parent wanting to deny access does not crop up very often in this court. It would be a very extreme case where the court thought that a day downstairs would bring the mother to her senses about allowing access to take place. I have not come across such a case in 21 years. And fining the mother or imprisoning her may just engender more hostility. It can become an unanswerable problem.

A child under 5 years old would be quite happy to forget the father after a separation, according to one court clerk.

The magistrates did not have much to add on this subject. One magistrate noted that the custodian parent sometimes tried to punish the non-custodian parent by objecting to access taking place:

> There are women who object to access, not thinking of the child, but because they think that this punishes the other party.

8. Access Mediation

The court clerks thought that the probation service and the social services were the only places that provided help for parents with access difficulties. One clerk suggested that there was a need to expand these services so that they could offer help to more parents. Another clerk said that he knew of no outside agency to whom parents could go, but added that he would welcome a mediation service* of some kind to provide such help.

One court clerk referred to the usefulness of supervised access if the non-custodian parent had not seen the child for a considerable length of time. The court clerks and magistrates also considered that supervised access might be appropriate when the custodian parent claims that the child is frightened of or has refused to see the visiting parent, and the court is doubtful about these claims. The magistrates also agreed that in certain circumstances, supervised access could be very useful. One magistrate pointed out that supervised access ought to be a step towards access without a third person present.

9. Access and other Disputes

The magistrates were equally divided on the question of whether there is any relationship between disputes about custody and disputes about access: three of the 6 magistrates thought that when custody was contested, there was likely to be a dispute later over access. This was explained by the determination of the parties concerned to fight over something. The remaining three magistrates had no experience of any connection between contested custody and access disputes. Four court clerks and 4 magistrates had experience of parents making a connection

*** A mediation or conciliation service employs trained workers called mediators to help separated parents to reach agreement over specific matters such as access to children.**

between access and maintenance; the non-custodian parent who was not getting his access might refuse to pay until his access was sorted out, and the custodian parent might refuse access until the non-custodian parent paid the maintenance. The parties are told in court that the two matters are quite separate, but this view was not always shared by the parents.

D. WELFARE REPORTS

Five court clerks thought that welfare reports were no more likely under guardianship proceedings than under matrimonial proceedings. When any court clerk said that there were differences, he always added that welfare reports were more likely under guardianship proceedings. The explanation for this difference seems to be that as guardianship proceedings were always concerned with children, and included applications from unmarried fathers, the proportion of cases in which welfare reports would be requested was more likely to be higher in these proceedings than in matrimonial proceedings which included parties without children, and excluded unmarried fathers. The court clerks were quite clear that fault, in the matrimonial sense, was separate from custody, and welfare reports were not more likely if the proposed custodian parent was at fault in the matrimonial sense.

1. Welfare Reports on Custody

All 6 magistrates interviewed said that they would require welfare reports in every case of contested custody. The 12 court clerks agreed that reports would be required in most contested custody cases, and 3 court clerks said that welfare reports would always be requested

in these cases. Welfare reports may be ordered in uncontested custody cases. These cases fall into three categories: doubtful custodian parents, custodian fathers, and other particular arrangements.

Magistrates may order welfare reports in uncontested cases if they have some doubts about the custodian parent. This doubt may be no more specific than a "feeling" about the case. Any uncertainty about the proposed arrangements for the children is likely to lead to welfare reports being requested. One court clerk pointed out that this would enable a further six weeks of "history" to accumulate and the bench might then be able to make the order with more confidence. Welfare reports might be requested to reassure the magistrates about the competence of a very young parent, or a parent who had appeared confused in the witness box. If there is evidence that the person seeking custody has been violent or cruel to the children, then welfare reports are very likely to be ordered. However, violence against the wife would not necessarily lead to a request for a welfare report according to one court clerk:

> If someone against whom a protection order had been made was asking for custody, I suppose I would be very careful. And perhaps, in that case, I would want a report. Certainly if the order included allegations that he had been violent to or threatened any child - not even that one - I would want a report. But if the violence had been purely against the wife, I would be curious, but it depends on the history of the case. I would not order a report as a matter of course.

Seven of the court clerks stated that welfare reports are ordered more frequently before the father is granted custody. One magistrate went so far as to say that he would never grant custody to the

father without a welfare report. The reasons for more welfare reports fall into two categories: the difficulty that a working father has making satisfactory arrangements for his children, and the age and sex of the children. The court clerks showed most concern when the children were under school age, and 3 court clerks also said that they would like the situation investigated whenever the father was to have custody of teenage girls. Three court clerks stressed that it was not the fact that the father was applying for custody per se that would alert them to investigate further, but rather that, in the nature of things, a working parent was bound to have more difficulties in making suitable arrangements for the children, and fathers are almost always working parents.

The other particular arrangements in which welfare reports are likely to be ordered are quite varied: before the children are divided between the two parents all the magistrates said that they would want welfare reports; before a third party is given custody, often a relative such as a grandmother whose health and age would be important considerations; when the proposals involve moving the child; when the proposed custodian parent has a new partner living with her or him and there was some indication in the evidence that the new partner might be an undesirable person to be with the children; when the parents ask for joint custody; and before split custody orders are made, with custody to one parent and care and control to the other. Neither court clerks nor magistrates had much experience, if any, of making either joint or split custody orders.

Two court clerks pointed to the fact that welfare reports which have been prepared for the court are not necessarily seen or read by the bench. A petitioner might apply for custody, and if the custody was contested and the welfare report did not favour the petitioner, then he/she might drop the case, hoping to get a more favourable welfare report when

the divorce took place. If however the welfare report favoured the petitioner, then the respondent might change his/her decision to apply for custody. In that case a hearing would take place, but as custody was no longer contested, the welfare report might not be read by the bench. One court clerk claimed that some solicitors asked for welfare reports in order to avoid having to tell their client that he/she had no chance of getting custody. This was felt to be an abuse of the probation officers' time and the time of the court.

2. Welfare Reports on Access

When welfare reports on the custody arrangements are prepared, they usually include consideration of the access arrangements. Welfare reports on access alone may be prepared when access disputes occur and the parties return to court for a variation order, particularly if the principle of access is in dispute. Access may be defined without a welfare report if the difference between the parties relate to the convenience of the access times only. But in most cases, access will not be defined without a welfare report. All 12 court clerks and 6 magistrates interviewed were adamant that access would never be denied without a welfare report. One magistrate said that a welfare report is ordered if there is any suggestion that the child is distressed by the visits of the non-custodian parent.

3. Medical Reports

Two court clerks had experience of separate medical reports being sent to the court through the solicitors:

> The solicitor may produce a Psychiatric report if there is any suggestion of psychiatric damage in the case of one of the parents. It does not happen often that the psychiatrist would be asked to assess whether or not access was detrimental to the child. But I do know it has happened with other clerks who have had experience of psychiatrists being called to give evidence. If there is any suggestion that access could have an adverse effect, then the solicitor might ask the psychiatrist for a report. This would influence greatly the decision of the court. I have not had a psychiatrist give evidence in court, but I probably have had a medical report on one occasion, but I can't remember the details. It is not a frequent practice.

> It is very rare for psychiatrists' reports to be used in disputed access cases. One or two I can remember, but I can't remember the specific instances. I know one or two cases where the General Practitioner has sent in a written report, and has said that access could be harmful to the child if it continued. This was a case where the custodian parent, a mother, got a doctor's report in order to exclude the father from having access.

Another court clerk spoke of the lack of power of the court to order psychiatric reports, but of his experience of a psychiatrist giving evidence in court:

> I think that I have only ever known one case where a psychiatrist was called in. The court does not have the power to order psychiatric reports. In the case that I experienced, the psychiatrist was used to show that the visits of the non-custodian parent were having an adverse effect on the child.

Eight court clerks had no experience of psychiatric reports being used in the magistrates' court for matrimonial purposes, but 3 court clerks said they were used, although infrequently. Five court clerks stated that the court had no power to order psychiatric reports, and one said that if one of the parents or a child were seeing a psychiatrist, then the probation officer preparing the welfare report might ask the parent's permission to talk to him, and the views of this psychiatrist would appear in the welfare report.

The fact that the custodian parent can take the child to the psychiatrist and get a report has certain consequences; whenever the custodian parent objects strongly to access taking place, he/she can attempt to get a psychiatric report to back up the claim, and this report will greatly sway the court, as reported by one of the court clerks above. However, if the non-custodian parent is not getting access, this parent is unable to take the child to the psychiatrist, as he/she does not have custody. Reports ordered by solicitors will almost invariably have been prepared for the custodian parent, and this was the impression of the 3 court clerks above. In all of these cases a report was used to try to prevent access taking place, and never to facilitate it.

4. Welfare Report Recommendations

The experience of 8 court clerks was that welfare reports usually contained recommendations to the court. Occasionally, when the two sides were very evenly balanced as far as custody was concerned, the officer reported his findings and did not make a recommendation. Recommendations on access were the rule. Two court clerks considered that in only about 50% of reports were recommendations made. Possibly this

difference is the result of the clerks having previously worked in other areas where the probation service practice differed from that of the city in this study.

Three court clerks and 1 magistrate had experience of the contents of a welfare report being challenged. All the court clerks and magistrates said that they would expect to follow the recommendations of the welfare report, but 3 magistrates said they would not necessarily do so. They stressed the importance of having good reasons for rejecting the recommendations, bearing in mind that the decision might be the subject of an appeal.

E. MATRIMONIAL SUPERVISION ORDERS

Matrimonial supervision orders[4] are rarely used in the magistrates' court in domestic cases, and only one magistrate had ever imposed one. There was general agreement that such an order would not be made without the recommendation of a probation officer or social worker. This means that in the domestic court, there would have been a welfare report prepared before the order was attached. One clerk remarked that this was not the case in the divorce court, where the judges were more experienced and would be prepared to impose an order without a recommendation. The orders are never made with a time limit other than the age at which the child attains his majority.

A matrimonial supervision order may be used when there is some doubt about the ability of the custodian to make adequate arrangements for

4. This term covers supervision orders made under matrimonial and guardianship proceedings.

the children, and this applies especially to custodian fathers. There is much more likelihood that a supervision order will be used if the custodian is the father rather than the mother; all of those interviewed stated this. The court clerks also thought that the custodian father was more likely to have a supervision order attached if he had custody of older girls.

A doubtful or inadequate parent, or a large family of children, is also likely to have a matrimonial supervision order imposed. These orders may be used, however, to "smooth troubled waters between the parents":

> One can't expect the welfare people to work miracles but sometimes a third person can sort out problems much better than someone near to them.

An example of the usual response to the question about the purpose of matrimonial supervision orders was expressed by one of the court clerks:

> I think that supervision orders are very useful first of all to monitor the arrangements that are made immediately after the breakdown of the marriage: to see the children into a stable environment again. They are also useful if there are some doubts - small doubts they would have to be - over the parents' suitability. So it is to monitor the physical environment of the children, and to check the parents' ability to cope.

These are the comments of two of the magistrates:

> The sort of things that they would have to sort out would be outings as far as the children were concerned; babysitters; getting free time for themselves; mainly concerned with the children. To sort out difficulties that children sometimes cause between parents. Also if a woman is a bit temperamental. Sometimes the supervising

> officer can help with finance. Some people have no idea how to manage. They could be given some help here.... Some probation officers think above the level of the people they are dealing with. It is sometimes hard to understand the people they are dealing with. There could be a class difference here, and this will affect the usefulness of the order.

> In some cases in the matrimonial court, you get a lot of hate, and one might impose a matrimonial supervision order if one felt that the atmosphere between the two parties was so bad that the children could be at risk. I would expect that facilitating access would be part of this process.

Another reason that was given was connected with providing a gender model for the child:

> The purpose of the supervision order is twofold. It is usually where an outside adult influence is required in a one-parent family for the health and guidance of the upbringing of the child. And perhaps, in particular, where there is a mother with a boy, the court might say that it would seem very sensible if there was a male figure available in bringing up the child. A male probation officer might be asked to undertake the supervision, or a female officer when there is a custodian father. The second possibility is to give the probation officer some legal foot in the door of the household. It is possible that this would help not just the child but also the mother.

Other reasons given for having a matrimonial supervision order included when there was poor accommodation; to help a confused or disabled

parent; and to provide someone for the custodian parent to turn to.

Seven court clerks reported that they have never known a matrimonial supervision order to be used because of access difficulties: three thought this would be an inappropriate use of the order; and 2 did not consider that the court had the power to impose a matrimonial supervision order for the purpose of facilitating access:

> I have never known a supervision order used to facilitate access. There is no power in the legislation to use supervision orders in this way.

Another clerk said the following:

> I have never had the experience of imposing a supervision order to facilitate access. I have had the probation service involved with access on a voluntary basis. But it could happen. I think it is really an unsuitable weapon to use for this purpose. I don't think that the probation service can really affect the issue of access, apart from monitoring the effects on the children. If the magistrates thought that the children were at risk from the access, they would not grant it. So I don't think that it would be suitable for access situations.

However, 3 court clerks considered that although the use of matrimonial supervision orders for access purposes was rare, this was an appropriate reason for applying it. One magistrate made the following remark:

> Where there are rows about access, I think that a supervision order would be a good idea. But if they come from a good background, and both parents are sensible.... then I think there is no need for a supervision order.

The clerks and magistrates generally thought that matrimonial supervision orders were helpful, but they did not know what the supervisor actually did. Two court clerks expressed their doubts about these orders:

> One wonders about the value of a supervision order. One does not know what happens in these cases. You do not know what sort of supervision is given. At least the court knows that it has done whatever it is able to do, but we do not know whether it helps or not.

Another court clerk was even more dubious:

> In theory the purpose of a supervision order is to protect the child; in practice the bench is protecting itself. The spectre of Maria Colwell still looms large. But the practicality of the situation is that the amount of supervision given is quite small. The provision is that the child should be under the supervision of the probation officer. Most practitioners recognise that it is something of a formality, rather than a provision that has any real practical effect. This is what I have heard, speaking to practitioners who have had a good deal more experience than I.

It is clear that magistrates make supervision orders most often when there is some doubt about the adequacy of the parenting provided by the custodian parent. Two magistrates expressed the view that such an order was class related, implying that only members of the lower classes would require supervision.

F. PERSONNEL INVOLVED IN THE COURT PROCESS

The magistrates were high in their praise of court clerks, who

were described as "excellent" and "very helpful". "We could not manage without them", one magistrate said. The court clerks considered that the quality of the magistrates varied: some were fine, but others were not so good.

In general, the magistrates thought highly of the probation officers, and of their reports. A number of court clerks and magistrates remarked that, in their view, probation officers performed a mediatory role while writing reports, and helped parents to avoid unnecessary squabbles. The probation officers were also seen as providing support for the parents, and one court clerk thought that probation officers would help the family with problems such as housing. However, there were some criticisms: one magistrate objected to the casual dress of some officers and thought that young and inexperienced officers were resented by some parents; another magistrate said that he judged reports by who wrote them:

> In some instances with probation reports, you may well find yourself making your decision not only on the report, but on who made that report. You may say that you always get a good report from this particular person - a balanced report. On the other hand, you may say that in the case of other reports, you would expect that sort of report from that person.

Both court clerks and magistrates considered that solicitors were not partisan. The magistrates were asked whether they thought that solicitors acted to facilitate agreement between parties with regard to the children, and they all agreed that solicitors did so. The magistrates also agreed that solicitors never exacerbated the situation between separated parents. Only one magistrate cited a single example where the solicitor did exacerbate the situation, but he stressed that this was an exceptional case in his experience.

G. DISCUSSION

1. Practices

The magistrates, who were observed in court on a number of occasions, appeared both confident and competent at determining the appropriate level of maintenance to be paid to wives and children. Custody was rarely contested, and generally the custody order was made in accordance with the wishes of the parties, after a few questions about the arrangements. Reasonable access was ordered as a matter of course, unless some complaint about access was made by one of the parties or his or her representative.

When problems arose about custody or access, most of the magistrates appeared to rely heavily on the advice of "experts": the court clerks for advice on the types of order they were entitled to make, and perhaps the appropriateness of the order in the circumstances; medical evidence on the rare occasions when this was presented to the court; and welfare reports when custody or access were disputed, or when there was some doubt about the adequacy of the proposed custodian parent or the proposed arrangements for the children. Welfare reports nearly always contained recommendations on custody and access, and it was rare for the magistrates not to implement these recommendations.

The suggestion that welfare reports should be ordered might come from a number of sources: solicitors almost invariably asked for reports in contested custody cases; the court clerk might prompt the magistrates to order reports when certain custody proposals were made, e.g. third party custody or children divided between the parties; and the magistrates themselves might recognise that certain custody proposals

were usually investigated, or have a sense of unease about the proposed custodian parent or the arrangements for the children. It was impossible to know whether all the court clerks and magistrates would consider welfare reports to be necessary in the same cases.

When matrimonial supervision orders were recommended in welfare reports, the court almost invariably made the order, allocating it to the agency named in the report, i.e. either the Probation Service or Social Services. The magistrates did not make these orders unless there was a recommendation from a welfare officer to do so.

2. Underlying Assumptions on Custody

The court clerks were aware that the maternal presumption had no place in law, but the ambiguity of some of their replies demonstrated that they found it easier to disregard this presumption in theory than in practice. The magistrates, on the other hand, were unanimous in asserting that the mother's claim to have custody of the children was much stronger than the father's, and half of them thought that a mother would have to be shown to be inadequate before a father would be considered. None of the magistrates thought that the mother's claim rested on the demonstration of the father's inadequacy.

The court clerks and magistrates assumed that the most desirable family arrangement was a working father and a mother who remained at home, particularly if the children were young. Therefore fathers at work were preferred to fathers at home, and mothers at home were preferred to mothers at work. However, if only one parent was at home during the day to look after the children, that parent had an advantage in a custody contest,

whether it was the father or the mother. The views of both court clerks and magistrates were similar on this question of working parents.

The court clerks and magistrates often assumed that a father would find it difficult to make suitable arrangements for his children as regards getting them to and from school; caring for them when they were unwell; and providing supervision for them after school and during school holidays. Three court clerks also expressed unease when it was proposed that a father should have custody of teenage girls. Therefore it was not uncommon for welfare reports to be prepared before fathers were given custody. Fathers in general were considered to be the more suitable parent to handle teenage boys. As a rule fathers were assumed to be less skilful at parenting than mothers, and were more likely to be offered support in the form of a matrimonial supervision order.

There was agreement between court clerks and magistrates that it was desirable for siblings to remain together, and therefore any proposal to divide the children between the parents was likely to be investigated by a welfare report.

A reconstituted family, i.e. a parent and a step-parent, was not always preferred to a one-parent family, but a father with a satisfactory new partner who remained at home with the children was in a stronger position than a father without such a partner, as it was assumed that better parenting would result.

A parent was assumed to be more suitable to bring up a child than a third party, and therefore welfare reports were likely to be ordered before custody was granted to a third party.

3. Underlying Assumptions on Access

Both court clerks and magistrates agreed that they were expected to grant access except in very rare circumstances. The court clerks regarded access as the child's right, with the exception of 3 of them, who regarded the right as the non-custodian parent's. Nevertheless, they all assumed that access was for the benefit of the child. The magistrates, with one exception, viewed access as the right of the non-custodian parent but also considered that children generally benefited from it. However, 2 magistrates were doubtful about the benefit of access in some cases, but they assumed they had to grant it if the non-custodian parent wished to see the child.

Both court clerks and magistrates assumed that access worked out well in most cases, and that reasonable parents would be able to get together and work out mutually acceptable arrangements which also suited the children. Therefore it was the policy of the court to order reasonable access. Only one magistrate dissented from the view that this order was appropriate: he considered the order was too vague; might not be reasonable from the child's point of view; and might get "whittled away" by the custodian parent over a period of time.

When disputes arose over access, it was assumed by both court clerks and magistrates that usually the parents were immature and/or disagreeable. Specified access was ordered and was a compromise between the wishes of the 2 parents, as it was assumed that they were the best people to set the parameters of access. Only 3 court clerks and 1 magistrate considered that matrimonial supervision orders were appropriate to facilitate access in these cases. The majority of court clerks and magistrates considered that welfare officer involvement would not change

these cantankerous parties and would be a mis-use of officers' time. The connection between disputes about access and disputes about maintenance or custody confirmed their view that these parties were often determined to fight about one issue or another. However, there was some support for setting up a mediation service (2 court clerks) and general support for the use of supervised access as an interim measure to monitor access when accusations were made about the effect of access on the child, or to re-introduce access after a period without visits.

One court clerk thought that children under 5 would be quite happy to forget their father after the separation.[5]

As magistrates assumed that the non-custodian parent ought to be granted access, it was very rare for the court to deny it. Evidence of disturbance in a child, which was related to access, was considered a valid reason, although both court clerks and magistrates considered that often the child had been influenced against the absent parent by the custodian parent. The wishes of an older child might also justify the refusal of access by the court. An undesirable non-custodian parent might be denied access if it was considered by the court that the child might be adversely influenced by the contact. However, one court clerk would allow access to a parent who was violent to the children when he was under the influence of drink, provided the access was supervised, as he considered that every parent had a right to see his or her child. The other court clerks and magistrates were not prepared to order access when the non-custodian parent was known to be violent at times. There was a marked prejudice against homosexual parents, and to a lesser extent, against promiscuous parents; but there would have to be evidence that the children were at risk from such parents before access was denied.

5. This view conflicts with the research findings of Wallerstein and Kelly (1980) reviewed in Chapter 3.

Step-parents were also assumed to have difficulty in exercising their authority over the child when the natural parent continued to visit, although this was not considered a sufficient reason for denying access. The possibility that step-parents might experience this difficulty whether or not the natural parent was visiting was not mentioned.

4. Underlying Assumptions about Probation Officers and Social Workers

The court clerks and magistrates were satisfied with the quality of the welfare reports prepared for the court, although 1 magistrate said that he judged the report partly by which officer prepared it. Unorthodox dress was objected to by one magistrate. The recommendations in welfare reports were almost always accepted and acted upon because it was assumed that the officers knew what was best for the child in the particular circumstances. A similar view was taken by the magistrates with regard to medical evidence.

Matrimonial supervision orders were also made whenever the reporting officer recommended them. The court clerks and magistrates assumed that the orders were recommended because of the inadequacy of the custodian parent in most cases, and that they were therefore unnecessary for sensible people who had a good background. Custodian fathers were also thought to need support as they were unlikely to be skilled in parenting. The 3 court clerks and 1 magistrate who thought that matrimonial supervision orders might be used to facilitate access assumed that the supervising officer would keep in touch with the non-custodian parent. The practices of probation officers and social workers differed from the impressions of court clerks and magistrates.[6]

6. See Chapters 9 and 10 for details of the work practices of welfare officers.

5. Legal Doubts

It was curious to find that so many court clerks considered it was inappropriate to order matrimonial supervision orders to establish or facilitate access. The wording of the legislation is that these orders may be made in "exceptional circumstances",[7] but the courts interpret these words in a wide sense.[8] However the major factor in ordering supervision is the presence of a recommendation in a welfare report, so the opinions of these court clerks probably had no practical effect on the number of matrimonial supervision orders made by the court.

6. Comparison of the Views of Court Clerks and Magistrates

Although the magistrates tended to play a fairly passive role in custody and access decisions, being guided by the court clerks on matters of law, the views of the court clerks and magistrates were similar on most matters. Both groups held the traditional stereotyped view of the male and female roles in relation to work and the care and upbringing of children, and they were uncertain about granting custody to fathers. The court clerks were aware that the maternal presumption did not exist in law, but their views coincided with the magistrates' views on the considerations to be taken into account when deciding the custody issue.

Both groups considered that access ought to be granted to the non-custodian parent, but all the court clerks agreed that the purpose of access was for the benefit of the child, whereas 2 magistrates felt they had to grant access even if they thought it was not beneficial to the child.

7. The relevant legislation is discussed in Chapter 2.
8. See Griew and Bissett (1975:323)

The prejudice against homosexuals was more pronounced among court clerks than magistrates, and they feared that a homosexual father might damage his child. Curiously, 3 court clerks also referred to the desirability of having welfare reports prepared before granting custody of teenage girls to their fathers. Did these court clerks feel that these children might be in danger of sexual abuse by their fathers? One magistrate, who was in general practice, claimed that such abuse was reported to him by his partner and the health visitor. As more information becomes available on the extent of sexual abuse within the family, it may be necessary to give greater consideration to this possibility in custody and access decisions.[9]

These views and practices will be compared and contrasted with the views and practices of the other interviewees in Chapter 11.

9. See Ives (1982) for a review of the literature on child sexual abuse and incest.

CHAPTER 8 : THE DIVORCE COURT

A. DATA

Interviews took place with 3 Divorce Court Judges, 2 from the northern city of the study and 1 from a neighbouring city. The details of how the judges were approached and the interviews conducted are given in Chapter 1.

B. CUSTODY

1. Contested Custody

While agreeing that the custody decision must be determined by what was best for the child, the judges considered that the parent with whom the children were living at the time of the hearing had a distinct advantage in the custody contest. However one judge said he moved the children in about 25% of cases. The other factors which were mentioned by the judges as meriting consideration were as follows:

a) the children should be kept together if possible;

b) the children should remain close to their school and their friends if possible;

c) the wishes of the children should be ascertained and taken into account;

d) the arrangements for looking after the children, especially before and after school and during school holidays and illnesses, must be adequate;

e) young children and adolescent girls were better off with their mothers generally;

f) older boys needed their fathers more, and should be with them if possible.

The judges described as "natural" the allocation of young children, and indeed children in general, to their mothers. In a contest over custody the mother just had to show that she was a good mother. If the children were young, and she was at home looking after them, so much the better.

A father who contested custody of his children needed to show that the mother was an unsuitable person to bring up children, unless the custody of older boys was in question. Two judges thought it was "natural" for older boys to be with their fathers. With younger children, and girls in particular, the father's case would be strengthened if he had a common law wife. The judges preferred the children to grow up in a family unit with 2 resident "parents". All the judges considered that most men could not cope with bringing up young children. They were all unhappy when men gave up their jobs to look after the children, although one added that he had come across some men who had made a good job of it. Another said that a man's work should come first.

Two of the judges occasionally interviewed children in private; the third judge never did so. None of them ever put children into the witness box for cross-examination.

One judge reported that when a parent had kidnapped the child, the judge would generally start out with a feeling against the kidnapper's request for legal custody. However all the factors of the case would be

examined in detail, he added, and the effect of moving the child again would be borne in mind. Kidnapping was rare in the judges' experience.

Contested custody cases occurred in about 4% of cases in the experience of one judge, and less than 10% according to another. Fairly often a case which started out contested became uncontested once the welfare report recommendation was made. Such cases were not included in the figures above.

2. Split[1] and Joint[2] Custody Orders

One judge had never heard of split custody orders, and another would only make such an order with the consent of the parties. The purpose of such orders was explained in this way:

> I make them when one party needs to have an important say in the upbringing, but does not, at the moment, have the physical facilities to have complete custody and control. Very rare cases, I think. The custodian parent would be less than ideal in these cases.

Joint custody orders were also uncommon. Two judges said they would not make such orders if the parties were likely to disagree about the child/ren's upbringing. The orders would only be made if the parties were willing to co-operate, and wanted such an order. One judge referred to the Court of Appeal ruling in Dipper and Dipper.[3]

1. The term "split custody" is used when custody is given to one party and care and control to the other.
2. The term "joint custody" is used when custody is awarded jointly to both parties, with care and control to one of them.
3. [1980] 2 All ER 722 CA

> Strictly speaking, there should be no need to make these orders in view of a fairly recent case in the Court of Appeal which says that even if one parent has custody and the other access only, that does not mean that the custodian parent has the right to make all the decisions concerning the child's upbringing. Day to day decisions - yes. But as far as the large decisions are concerned, according to the Court of Appeal, these should be made in consultation with the absent parent. The Court of Appeal says that it is time that the myth was exploded that the custodian parent had this right alone. That being so, legally, in my view, the necessity for joint custody orders had gone. In practice, it does not work out like this, but they are not talking about practice; they are saying what they understand the legal position to be.[4]

The purpose of a joint custody order was explained by another judge:

> Sometimes you have a father who is quite content to leave care and control to his wife, but he wants joint custody so that he can have a say in the education or religious upbringing of the child. Those seem to be the 2 main things. But otherwise there does not seem to be much point in a joint custody order; it is the care and control part that matters most. I do get children who spend more or less equal time with both parents, but even so one gives custody to one parent.

Another judge did not want both parties to be equally involved with the upbringing of the children, presumably because he felt it would not be good for the children:

> I myself would not necessarily want to see both parents having an

4. For a discussion of custody, see Chapter 2.

equal part in the child's upbringing. I think that this is the thing they have to accept. If you bust up your marriage and go off with someone else, or you behave in such a way that things cannot continue, one of the things that you must understand is that it means that the children are going to be with one of you, and not with both of you. I think that ought to be faced by people.

3. The Children Divided Between the Parties

This practice was disliked by the judges. Orders were made only when the children wanted them, and one judge stressed the importance of regular visits between the children.

C. ACCESS

1. The Purpose of Access

The purpose of access was to maintain the contact between the child and the absent parent, according to all three judges. The amount of access that was desirable was thought to depend on a number of factors:

It depends on the age of the child, its sex, and the type of child. I would have thought that with a tiny baby very little access would be the most convenient thing. In the case of a 7, 8, 9, or 10 year old boy, if he is interested in football and the father is mad about it too, I would have thought there ought to be the most generous access. A girl at certain times wants her mother, and if she lives with her father there ought to be complete access to the mother whenever she wants it. These sorts of things are important.

> I think that boys are most difficult. If the boy is in the custody of the mother, and the father is anything like a chap, I think that there ought to be the fullest possible access.

Another judge mentioned the age of the child; the time since the separation; geographical considerations; and how well the parties got on. One judge declared that sometimes, in his opinion, "access is exercised too frequently for the child". Generally the judges liked overnight staying access to take place:

> I am a great believer in a lot of access. I usually award one day a week, with staying access for one or two weekends each month, and a fortnight holiday in the summer. I think that staying access helps considerably because then you can put them to bed and read a bedtime story and that sort of thing.

Another judge suggested that the alternative to weekly visits was overnight access once a month, but he would not award both.

Access was described by one judge as "primarily the right of the child to have contact with his natural parents". Another judge viewed the right as a mutual one:

> It is the right of the parent who has not got custody. I think it is only fair to the parent to have access to that parent's child, and I think it is only fair to the child to keep in touch with that parent. I think it is mutual.

The non-custodian parent was thought by one judge to have a duty to visit:

> I think he has a duty to keep in touch with the child. I would think

that it is more or less 1 parent in 4 who does not visit after the divorce. It is usually the fathers who don't visit. But I don't think there is anything you can do about it.

However another judge did not think that this duty existed in all cases:

Sometimes it is better to make a clean break, so I would not be prepared to say that there is a duty in all cases, although I think there is in many cases.

I would consider that a clean break was desirable - I really can't define the circumstances. But I suppose that if the child/ren remained with the mother, and she had taken on a new family straight away, and perhaps if the other parent was living some distance away so that access would be infrequent, and the children had settled with someone that they recognise as their new father, then perhaps if the father has also got a new wife - then these are the sort of circumstances. I don't criticise a father who has made a deliberate decision. Sometimes he makes it because access is upsetting for the children. Usually what the children want is for the parents to be together again. So of course they are upset. But the children are not necessarily the best people to say what is best for them. I suspect privately that the effect of broken marriages on children is exaggerated. They are tough little things.

The third judge also thought that the non-custodian parent should be left to decide for himself.

All the judges agreed that when access was not taking place it was usually because the non-custodian parent was not bothering.

2. Access Orders

The judges usually ordered "reasonable access" and preferred this type of order:

> Normally you say "reasonable access", and that means what the parents and the child, if it is old enough, can all agree together. It is much better if the parents agree it between themselves in a reasonable way. The courts only define access if they have to.

The judges did not normally define access at the initial hearing. One judge would make such an order only if requested, or if it appeared to be necessary. Another said he would only define access when the arrangements broke down. Defined access times were set within the parameters proposed by the parents - a compromise between the wishes of the two:

> I try to use my common sense and to visualise the kind of people they are and the circumstances in which they live and impose something that seems to me to be reasonable, but it is hit and miss. I am no cleverer at it than anyone else.

However the judges disliked defined access:

> I think that defined access is the worst possible thing. It is a terrible thing that it has to happen. I think that if people can't get together and work out a simple thing like access, it just shows what inadequate and hopeless people they are, and it causes more trouble, and never works in my experience. I say, right, you can't agree, so I am going to impose it. So that is what happens. Well, the next week he says that he can't come because he is going to a

> football match or something. So he says he will call next weekend. She says, no you won't, I am going to my mother's. You never heard such childish nonsense. Mind you, it is mostly deliberate of course. Well, what are the powers of the court? You can have them up for breach of the order, but what is the good of that?. I try very hard. I give them a sort of Dutch Uncle talk, and tell them that if they can't agree, I shall fix the times, but surely to goodness they are both adults and should be able to get on and fix it themselves. There has to be give and take on both sides. I tell them about it, and then I threaten them that if they don't agree, I shall fix it, and I can tell them beforehand that whatever I fix won't satisfy either of them.

Another judge pointed to a different problem:

> One snag with defined access is that if it is a case where the parents have come to regard it as something that must be kept to, and not capable of variation, it is often very difficult for the child who has to lay aside every Saturday afternoon, or every Sunday, to go and visit the other parent, when he may well have got things to do at home with his pals. It must be awful for them.

The judges agreed that it was worth while for a non-custodian parent to return to court to get an access order as a last resort. However they recognised that some custodian parents could be very difficult about access:

> One parent may not want access to take place, and this is always very difficult. It not infrequently happens. Unless there is evidence that access will harm the child, one always has got to try

and make an access order, and try to make it work. I know that occasionally it comes completely unstuck, and it is usually when the custodian parent takes such a dim view of the other parent that they think he would be a bad influence on the child. Usually this is coupled with the fact that the custodian parent has made a new family, and they want to exclude this bad memory and this person from it. It is awfully difficult.

The power of the court in these cases was also limited.

I have come across cases where the custodian parent has refused to comply with the order. There is quite a lot that you can do in these cases, but you can't do it because it doesn't help anyone. You could always commit the parent to prison for contempt of court for refusing to comply with the access order, but that would make it very difficult for the children, so you don't do it. The other thing you can do is to threaten to give custody to the other party, but this would not be good for the child either. So, in a sense, there is nothing you can do. Usually the parties return to court and try to get the thing sorted out. But I have known cases where parents with custody have refused access completely and that was it. Fortunately there are not many such cases.

Access conditions were disliked by one judge:

I don't use conditions like "access but not in the presence of the co-habitee". It is open to me to do it, but I don't see why you should keep a skeleton like that in the cupboard.

Conditions were sometimes added by the other two judges:

> If the marriage had broken down fairly recently, and it appeared to be appropriate, then I would add the condition that access was not to be in the presence of the co-habitee. I think that sometimes it might be appropriate because the child might resent the presence of someone who has surplanted the other parent. But I don't think it is appropriate to keep the condition indefinitely - only initially.

Another condition mentioned by one judge was that the child was not to be left outside a public house. One judge added that access conditions were very difficult to impose.

Social Workers and Probation Officers might be asked to supervise access, although the judges were reluctant to do this, partly because it was unfair to the officers concerned. Such an order might be made if the non-custodian parent had not seen the child for a long time; or if the custodian parent was afraid that the child would be upset by access. One judge remarked that he did not think it was part of the job of a probation officer or social worker to sort out access disputes.

Access disputes occurred fairly regularly according to one judge, but the numbers were very small compared to the number of divorces. He considered that many disputes appeared to be resolved. The judges noted connections between access and other disputes:

> Yes, there is a connection between disputed custody and disputed access, because the parents are fighting each other on every point available. The same applies to maintenance and access.

The judges observed that grandparent access applications were rarely made.

3. The Principle of Access

The judges stated that they would delete access if they considered it would be harmful to the child. The behaviour of the non-custodian parent to the child was the important consideration:

> If the child gets severely disciplined or chastised, then you would refuse access. Or if the child was being brought into bad company, or taken to pubs consistently, or something like that. Occasionally you would refuse access if the parent failed to turn up for access on the agreed dates. It upsets the child so much to be got ready for an expected access visit, and then nobody turns up. Kidnapping is another very good reason for refusing access, particularly if you think it might happen again.

The fact that a child was born after the separation took place would not prevent any of the judges from granting access. Nor would the remarriage of one partner be a good reason for reconsidering access.

One judge relied on the children's officer to report whether access was upsetting the child or not. It was very rare for a psychiatric report to be used in an access case. One judge would be influenced by a doctor's opinion:

> If I had a doctor's report saying that the child is now bedwetting, whereas it never did so before, and it is biting its nails, and the doctor says that he cannot find any other explanation for it as it only occurs after access has taken place, then I would try deleting the access for the time being. I would say to the father to come back in about 6 months' time.

All the judges had experience of children refusing access. However they thought that usually the child was influenced by the custodian parent:

> I have come across many cases where the mother in particular has come in here and said that the children do not want to see their father. I discount that, as you know perfectly well that the mother has told the children that that is what they should say. If I suspect a mother of influencing a child, then I would order access. I would say, well never mind, that is the order of the court, and they can get on with it. But supposing it really became an issue, then I would get a welfare report to find out exactly what the situation was.

One judge said that when he made an access order in those circumstances, he took the view that such an order put the responsibility on the custodian parent to use all reasonable efforts to persuade the reluctant child to see the other parent.

However the child's reluctance might be genuine. There might be some really deep-seated revulsion and fear of the other parent. The judges would not expect a custodian parent to force a screaming child to see the other parent. However, unless there was evidence that the child was seriously affected, the access would not be deleted by the court.

D. WELFARE REPORTS

1. The Requests for Welfare Reports

One judge considered that solicitors requested welfare reports

in about half of the cases that came before him. Welfare reports were ordered either by the Registrar or the Judge (MCR 1977 r 95(1)).

(i) Welfare Reports on Custody

When custody was contested welfare reports were ordered almost invariably by 2 judges. The third judge would order them in most cases, provided he thought they would be helpful in reaching the decision. One judge complained that some solicitors requested welfare reports when there was no real dispute. When a case was heard for the variation of custody, welfare reports would not normally be required if the children had already moved to the new home. One judge would only order welfare reports if one party disputed the transfer of custody. In uncontested custody cases, welfare reports would be ordered if there were doubts about the adequacy of the proposed custodian parent, or if that party had a history of criminal behaviour.

(ii) Welfare Reports on Access

When there were disputes about the principle of access, i.e. whether access should take place, the judges agreed that they would order welfare reports. One judge might make an interim order denying access to one party without a welfare report, if he was worried about the case, but he would order welfare reports and examine them before making the order. Another judge would follow the same course if there were allegations of violence being used against the child/ren.

If the dispute was about the extent of the access, welfare reports might not be ordered if agreement could be reached without them. In these cases, access would be defined without the necessity for welfare

reports, except when there were very serious disputes.

(iii) Satisfaction Reports

These reports would be ordered whenever the judge felt that there was insufficient information available for him to sign the Certificate of Satisfaction:[5]

> We have a statutory duty to see that we are satisfied. We must do the best we can in line with the statute. There are cases in which the petitioner does not know anything about the circumstances in which the child is living, and the respondent does not turn up at the hearing. In those cases, I always inquire first if there is any mutual friend or relation who is in touch and could provide the necessary information. As a last resort I would order welfare reports when there is simply an absence of information. I think it is up to the petitioner to do their own homework and make their own inquiries. The respondent is under no duty to provide an affidavit if they have custody of the children.
>
> The statute also says that the decree can be made absolute even though the court can say no more than that it is impracticable for the person before the court to make arrangements. There might have been a custody or separation order perhaps 12 years before. The court can't really chase up these children. In these circumstances one has to fall back on the impracticability for the petitioner to provide the information.

2. The Quality of Welfare Reports

The judges were happy with the quality of welfare reports

5. See the Children's Arrangements in the divorce court in Chapter 2.

produced in court when there were access disputes:

> I have seen perhaps 2 or 3 psychiatric reports on children. Usually they seem to me to be scraping the barrel for the purpose of denying the other parent access - pretending that the child is suffering. I have not been very impressed by the ones I have seen. I have never ordered such a report. These reports would be prepared at the request of the custodian parent, and produced in court in order to try to get access deleted. The circumstances of the non-custodian parent who is denied access would mean that it would be very difficult for that parent to get a report to show that the access was not harmful.

5. The Preparation of Welfare Reports

Whenever possible the judges preferred welfare reports to be prepared by one officer. They differed in their opinions as to whether parties had the right to see these welfare reports, although they all considered that it was a desirable practice in most cases:

> I don't believe that parents have the right to see the report. What happens is that the reports are shown to the legal advisors, who, I suppose, show them to the clients. If the parents are not represented then I would allow the parents to see them simply because I would have thought that it was only fair that they should. The court obviously pays attention to that report, and it seems wrong in principle that the court should act upon a report that the parents had not seen.

One judge was confident that the parties not only had the right to see

the welfare report but also to buy a copy:

> If a party asks for a copy of the report, we have got to give them it. There is nothing to stop them from showing the report to whoever they want to show it to; they are not committing any offence by doing so.

Another judge voiced his disquiet about the practice of parents seeing welfare reports:

> Well, it is difficult really. I like them to see the report because supposing there is something very critical of one of them in the report, then I think it doesn't do that party any harm to see that. Whether I like the other party to see it, I'm not so sure. You see, if the wife sees that the welfare officer takes the view that the husband is an idle fellow and this and that, it is putting ammunition in her hands in a way.

During the preparation of welfare reports, one judge considered that the reporting officer might be able to do some mediation work with regard to reaching agreement on the extent of access. But he thought it unlikely that much could be achieved by the officer at that stage.

The judges had different beliefs about the practice of welfare officers discussing their welfare reports with the parties. One thought this would not be done; the other 2 thought it was the usual practice, and one added that it could be very helpful for the parties.

E. MATRIMONIAL SUPERVISION ORDERS[8]

1. Making the Order

One judge stated that he rarely made a matrimonial supervision order without a prior recommendation to do so in a welfare report. Certainly, he added, I would have obtained the prior approval of the Probation Service. Another judge quite often made these orders "when nobody had thought of it", so that there were no welfare reports in these cases.

One judge would ask the reporting officer which agency ought to supervise, and order accordingly. He thought that the age of the child determined which agency should handle the case, young children going to Social Services and older children to Probation. The previous involvement of one of the agencies was mentioned by another judge as the most likely reason for allocating the order, but he did not recall there ever having been a problem deciding where the order should go. It is almost always apparent which agency is appropriate, he said. The third judge allocated the orders himself. If there was a semi-criminal touch to the case, it would go to Probation; while straightforward cases went to Social Services. He did not use the age of the child as a criterion for deciding which agency should supervise. In his view rather more orders were dealt with by Social Services than by Probation.

Time limits were rarely stated. One judge was content to allow the supervisor to decide on the appropriate time to apply to the court for a discharge of the order. Another had never considered making a time limit, but thought it might be a good idea, especially when differences between the parties, for example over access, might be expected to have

8. These supervision orders were made under the 1973 Matrimonial Causes Act, or the 1971 Guardianship of Minors Act.

settled in about 6 months. The third judge had taken over from a judge who was in the habit of making 1 year matrimonial supervision orders. He was sometimes asked to make a time limit, and did so when requested. But his own instinct was to leave it to the supervisor to apply for a discharge when the time was ripe.

2. The Purpose of the Order

The reasons for making the order varied from 3 definite categories (albeit very broad ones), to little more than a vague sense of unease, or a dislike about some view or attitude of the custodian parent. The broad categories were:

a) to check how the arrangements for looking after the child were working out;

b) to try to get access to work properly;

c) to provide help and advice to an inadequate custodian parent.

The purposes of the orders were generally stated in terms of keeping an eye on the custodian parent, and providing support. There were differences between the judges regarding the use of supervision orders to help settle access disputes. Two judges thought that such orders were helpful. One said that if there was a high degree of conflict, there was almost invariably conflict over access, and a matrimonial supervision order was a good idea to deal with such problems. Another judge would make an order when there were access disputes, but he did not like doing so:

> I don't think it is fair to involve the probation or social services if it is simply a question of the parents being bloody minded. Sometimes the officers are willing to undertake the task of trying

to sort out the access disputes. If they are willing, then fair enough, but I don't like imposing it on them.

When asked if matrimonial supervision orders were made more frequently when fathers had custody of the children, one judge thought not, although he had not kept records, while another considered that this was undoubtedly the case. The "unusual situation" of a man running a home made it prudent to make such an order, he said. The father might be enthusiastic at first, but that might wear off.

A large family of children might be more likely to be under supervision, and one judge explained that this was because of the practical difficulties the custodian parent would face. Allegations made by the non-custodian parent about the proposed custodian parent would be investigated by a welfare report only if the judge thought there might be some truth in them. One judge observed that these orders were made most often on working class families, but the explanation was that there were more divorces in that group. He denied that there was a bias towards making matrimonial supervision orders on working class parties.

Two judges would spell out the reasons for the orders to the parents, while the third would give a general indication. The parties would be told that the order was to help them and the children.

The judges' intentions in making the orders might not be known to the supervisor, one judge said, as the very full notes made by the clerk might not be available to him/her. However he thought this was not a problem, as the supervisor had the opportunity to get to know the parties, and ought to work on his/her own assessment of the case.

3. The Parties, the Supervisor, and Solicitors

Resentment by the parties because of these orders was reported by two judges. One estimated that it occurred in about 2% of cases only. The other judge added that some parents were very grateful to have the support, especially if they knew the officer already. Occasionally the custodian parent refused to co-operate. Two judges had experienced this difficulty and both responded by threatening the parent with a care order, or a change of custody. However, one of them said he would try to get the party's co-operation by talking to him/her nicely, but if that was no use he would have to be severe.

The judges had no experience of a supervisor returning to court because he/she was unable to see the children under supervision. The judges seemed happy with the existing powers of the officers, although one judge said that for practical purposes an additional power was needed to enable officers to find out the address of the supervised child.[9] Nor did any judge want guidelines provided for the supervisor. Two judges considered that if the supervisors knew their job, they would be able to exercise their own judgement and know what to do.

It was possible for a non-custodian parent to be helped through court channels to get information about a child he/she was unable to visit, thought one judge. The court might ask a welfare officer to make periodic reports so that the non-custodian parent could be kept informed. The same judge thought that when a non-custodian parent was denied access by the custodian parent, and there was a supervision order in existence, it would be "natural" for the officer to keep in touch with the non-custodian parent. However he did not know whether these practices were in operation

9. See Chapter 2 on the powers of supervisors.

or not.

The general consensus was that solicitors in general were helpful in reducing conflict, except for one or two who liked to battle things out.

F. DISCUSSION

1. Practices

The practices of the 3 judges were the same in some areas, for example reports were almost always ordered when custody was contested, and access was not deleted without a prior investigation. In other areas, it was not clear what criteria were used. Reports were ordered in some uncontested custody cases, but it was not possible to list the circumstances in which they would be ordered. Rather it was a combination of circumstances which gave rise to anxiety on the part of the judge - a feeling of unease. It was impossible to know whether one judge might order a report in a particular case, while another might not.

Another area in which it was not clear what criteria were used was in making matrimonial supervision orders. The categories stated by one judge were very broad. Matrimonial supervision orders were used in some cases of access disputes. How were the cases chosen? Some orders were made so that the arrangements for the children could be checked. How did the judges decide which arrangements ought to be checked? Inadequate parents might be supervised. How was the judgement of inadequacy made? How inadequate did they have to be? It was difficult for the judges to be precise about their choice of cases for supervision, as

each case was sui generis. Nevertheless a study of the information available in court files might have provided some insight into how different judges made their decisions.

Judges acted differently in other respects too. Not all judges interviewed children. Some judges relied on the recommendation of a welfare officer before making a supervision order; others did not. Some judges played a more active role in the allocation of supervision orders to either the Probation Service or Social Services, and they offered conflicting criteria for this allocation. Judges also differed in their perception of the role of welfare officers in relation to access work.

Practices varied from one area to another. For example, the welfare reports from the magistrates' court appeared to be available to one judge, but not to another. Possibly magistrates' court reports were more likely to be available when the courts were housed in one building.

There seemed to be quite a lot of room for judges to operate individually as each saw fit, and they used their own discretion about the type of questions to ask during the Children Appointments.

2. Underlying Assumptions on Custody

The "normal" family pattern which the judges appeared to work from was one in which the woman stayed at home and looked after the children, while the man was the breadwinner. Custody decisions tried to emulate this pattern as far as possible. Unless the woman was a "bad lot", she ought to have custody of the children, especially young children. Fathers ought to work, and therefore they should only have custody of the children

in exceptional circumstances. A father with a substitute mother for his children would be in a better position to get custody. The judges also assumed that teenage girls needed their mothers, and teenage boys, their fathers. Therefore fathers were in a stronger position when applying for the custody of older boys. The judges found it hard to reconcile themselves to the idea of a man bringing up children, in spite of evidence that some men made a good job of it. Two of the three judges expected that matrimonial supervision orders would be made more frequently when fathers were awarded custody. Men were not in their "normal" role, and therefore needed additional support. This strong bias in favour of women having custody of the children suggested that the maternal presumption still prevailed among these judges.

3. Underlying Assumptions on Access

The judges worked from the assumption that access was desirable from the point of view of both the child and the absent parent, and was beneficial to the child unless there were overt signs of disturbance. The second assumption was that "reasonable" parties would get together and agree on access times, so that normally the appropriate order of the court should be "reasonable access". It followed that, if disputes occurred, the parties were behaving unreasonably. One judge described such people as "hopeless and inadequate", and did not want to waste the time of welfare officers on them, unless the officers were willing to try to sort out the difficulties. The other two judges thought that welfare officers could help with these problems. As relatively few access disputes returned to court again, it was assumed that generally access does get sorted out.

Defined access orders tended to be made only when the parties

could not agree on mutually agreeable access times. These orders were disliked by the judges. One used the circular argument that since access was defined only when there were problems, these orders were always unsatisfactory. The possible positive advantages of defined access were not explored.

One judge expected the custodian parent to encourage a reluctant child to visit the absent parent. Yet the judges agreed that the reluctance of the child was nearly always the result of the custodian parent's attitude to his or her ex-partner. It was unrealistic to hope that the custodian parent would encourage the child to visit unless that parent had already been helped to come to terms with the past.

There were 4 reasons given for no access taking place:

a) the non-custodian parent could not be bothered to visit in the majority of these cases;
b) a determined custodian parent prevented access taking place in a very few cases, in spite of the orders of the court;
c) access was deleted by the court in a small number of cases because the access had a detrimental effect on the children;
d) a very small number of conscientious non-custodian parents decided to cut themselves off from their children, believing that this was in the best interest of their children.

When a non-custodian parent was denied access by the custodian parent, as in (b), the assumption of the court seemed to be that access would benefit the child, but the court was powerless to do anything about it. No judge suggested that a supervision order should be made in these cases to monitor the effect on the child of no access, and to keep the

non-custodian parent informed of the child's development. In fact, the court offered nothing to the non-custodian parent in these circumstances!

When a court deleted access, as in (c), the reason was not that the non-custodian parent was an unsuitable person per se, but that the interaction between this parent and the child was harmful to the child. An "unsuitable" non-custodian parent would be given access provided his treatment of the child was satisfactory. This was borne out by the access condition that the child must not be taken to a public house. The father might drink too much, but provided he did not drink during access times, these visits were allowed to continue.

Access was deleted following the recommendation of a welfare officer who presented evidence of overt signs of disturbance in the child. Very occasionally evidence of damage was also presented by a psychiatrist usually employed by the custodian parent to strengthen the case for having access deleted. Psychiatric evaluation of the possible long-term effects the loss of contact with one parent might have on the child were never presented. The difficulty with predicting the long-term effects of any action is that one may be engaging in crystal-ball gazing. But ignoring the long-term effects may mean that the action taken increases the damage to the child.

There was a contradiction between the assumption that the judges adopted in relation to access, and the assumption of the conscientious non-custodian parents in (d), who decided not to visit again. The judges assumed that access was good for the child unless the parent/child relationship was at fault. These parents assumed that the child could be better off without visits, even though there was no question of an impaired relationship between the child and the absent parent. Yet

the judges were prepared to respect the decisions of these parents, and indeed sympathised with them.

4. Underlying Assumptions about Probation Officers and Social Workers

The judges assumed that there was a developed discipline of child development which enabled the officers to make expert judgements on child custody and access questions. This view has been challenged by one child psychologist (King, 1981:51), who states that there is no internationally accepted discipline of child development. He also questioned the expertise of social workers in this respect.[10] Nor did the judges entertain the notion that social workers might be biased or less than impartial in their judgements.

When matrimonial supervision orders were made, the judges considered that they had done all in their power to protect the child/ren. The children who were subject to these orders would be kept under surveillance. The judges assumed that the social workers would see a need for the order, even if the officers' perception of the need for the order differed from their own. They also appeared to believe that there was a developed approach to handling these orders. Therefore no guidelines for operating orders were needed, as officers who knew their job would know what to do. The judges also believed that officers would know the procedures, and return to court once the problems with regard to the supervised child had been resolved, as far as this was possible. Therefore no time limit was needed. The supervisors were assumed to share the judges' views on the desirability of access in most cases, and therefore to work with both parents in an attempt to get access working

10. See the studies of welfare practices in Chapter 3.

properly. As complaints from supervisors were extremely rare, the judges believed that they had sufficient powers to enable them to carry out their work. Therefore no additional powers were needed. The interviews with Probation Officers and Social Workers demonstrated considerable divergences from these assumptions.[11]

5. Legal Doubts

There were two legal points on which there were differences of opinion among judges. One concerned the right of parents to see welfare reports prepared in Matrimonial and Guardianship cases. The second revolved round the problematic issue of what exactly is involved in "custody", and whether joint custody orders are unnecessary following Dipper and Dipper. For consideration of both points, see Chapter2.

These views and practices of the judges will be compared and contrasted with the views and practices of the other interviewees in Chapter 11.

11. Chapters 9 and 10.

CHAPTER 9 : PROBATION OFFICERS AND SOCIAL WORKERS

A. DATA

The information for this chapter was obtained by interviewing 10 probation officers and 14 social workers, as described in Chapter 1. This chapter deals with the practices and the views of these officers in relation to custody and access orders, and welfare reports. Matrimonial supervision orders are dealt with separately in Chapter 10 when 15 of these officers provided detailed accounts of supervision cases, while the remaining officers discussed these orders in general terms.

B. CUSTODY

The officers considered that mothers were the "natural" people to bring up children, especially small children. It was usual for fathers to support their families, and to perceive their major responsibilities in relation to their children in terms of support rather than child care. This was not to say that fathers were unimportant; on the contrary, one officer stressed that fathers were important even to very young children.

In uncontested applications for custody, the officers were not surprised that reports were requested much more frequently when the father was the applicant rather than the mother. In contested applications officers considered that fathers were disadvantaged except when teenage sons expressed the wish to be with them. One officer said that only mothers could cope with children of both sexes. Another officer commented that fathers saw themselves as disadvantaged in contested applications and that solicitors were likely to advise fathers that they were unlikely to be given custody. One senior probation officer reflected on the practice in another area

where reports recommending that fathers should have custody increased when the female Divorce Court Welfare Officer was replaced by a male officer. Another officer remarked that reports were bound to be influenced by the officer's feelings regarding custody.

A probation officer reported that siblings were divided between parents more often than one might imagine in view of the prevailing opinion that children should not normally be divided. Another officer explained how the majority of cases arose:

> Judges seem to have a rough rule of thumb that children who are into their teens are listened to and as far as possible their wishes are acceded to, so I think that the most common cause of splitting children is that the teenage boy says that he wants to go with his father. Where there are children say of 7 and 5 years old it makes sense for them to be with Mum.

The experiences of officers varied in relation to joint custody. One senior probation officer had worked in another area where joint custody was considered desirable and was granted frequently at one time:

> Custody is a pretty vague concept and exactly what you do have if you have not got care and control is unclear. But the fact that the parent, even if he is not living with you, is an important figure is something that I wish to represent in recommending joint custody. I think that those circumstances are rare in which one would say that this person is no longer important.

Another experienced senior officer had only experienced one case of joint custody during his years in the Probation Service. He considered that the DP&MCA 1978 was against the principle of joint custody.[1]

1. See Chapter 3 for details of this Act.

He said:

> If the parties have the ability to look carefully at the interests of the child, then probably who has custody doesn't really matter. If this co-operation over the children is not there, then joint custody can actually rebound, so that one parent, particularly the non-custodian parent, constantly undermines the other parent, using threats like "at least I have a chunk of this child and if you do not do what I tell you I will go and get the whole child". This/the experience that I have had in one joint custody case. A well-intentioned move, which probably pertains in an informal sense in some cases, cannot necessarily be applied formally in every case.

The custody recommendation was obviously affected by the officers' views, particularly in relation to the maternal presumption. However officers did not list adverse characteristics which would rule out a parent, but claimed to come to their conclusions on the basis of their assessment of the relationship between the parent and the child/ren. They relied on observations and questioning, and included questioning older children and assessing their reasons, taking the age of the child into account.

C. ACCESS

1. The Principle of Access

Social workers had very little experience of writing access reports and did not have to face the problem of making recommendations about whether access should be denied or not. Two of them clearly did

not feel they had the necessary expertise to make decisions on the principle of access, and they wanted certain doubtful cases to return to court "for a legal decision". One probation officer said he would not feel confident about making such a recommendation. Yet he could be called upon to do so at any time. All the officers expressed the view that access ought to be permitted unless it was detrimental to the child in physical or emotional terms, but assessing the net effect of access was not a simple task.

(i) Child Content to See the Non-Custodian Parent

All but 3 officers said that as long as the child was content to see the non-custodian parent access ought to be encouraged. One probation officer complained that access was talked about far too often in terms of adults rather than children. Another emphasised the importance of satisfying the needs of the child rather than the wants of a parent. One social worker remarked that it was not his primary task to placate parents over access; he was not particularly worried about the parents but only about the child. The benefits of access were described in terms of maintaining and furthering the existing relationship with the absent parent, and furthering the development of the child in various ways, such as providing close contact with parents of both sexes, and giving the child some sense of his/her background and origins.

The 3 dissenting officers specifically raised the question of the effects of access in broader terms. This became clear when particular cases of children under matrimonial supervision were discussed.[2] These officers were concerned with the possible adverse effects of the non-custodian parent's visits on the relationship between the child and the custodian parent, or his or her new partner. No doubt the other officers

2. The details of these cases are described in Chapter 10.

would have agreed that this should be taken into account, but none of them raised it as a possible factor which might override the child's desire to see the absent parent. It seems likely that the 3 officers who described their experiences of this conflict attached more weight to the effect of access on the child's environment than did the other officers interviewed.

This difference illustrates the difficulty of deciding on the net benefit to the child of access. On the one hand, the children were happy to see the non-custodian parent; on the other hand, the relationship of the child at home might be adversely affected. How much weight to give to either factor is a matter of individual judgement which is not helped by the dearth of literature on the long term effects on the children of a break in access.

On the whole the social workers were less enthusiastic about access and more doubtful of its benefits than probation officers. This may be because the cases the social workers saw were all subject to matrimonial supervision orders and these orders were often imposed because the parents were considered to be inadequate. In many cases, the non-custodian parents were not visiting, and when they were on the scene they may have been perceived as a hazard for both the child and the custodian parent.

(ii) The Child's Objections to Access

The officers' explanations for children's objections to access could be placed in 3 categories. In any of these circumstances, it might be desirable that access should discontinue.

(a) Child's Response to the Custodian Parent's Feelings and Behaviour

Many officers explained the child's refusal to see the non-custodian parent as the result of indoctrination by the custodian parent, and the officers were unanimous in their condemnation of this behaviour. A number of officers described how they would work with the custodian parent and the child to make access possible.[3] However, two officers said that in the rare cases of a determined custodian parent there was nothing they could do to set up access. These officers voiced their opinion that the custodian parent would have reason to regret this behaviour when the child grew older and became curious about the absent parent. They speculated that the child might turn against the custodian parent for preventing access.

Another explanation for the child's refusal, which was put forward by the officers, was that the child could not cope with the reaction at home to access visits taking place. Loyalty to the custodian parent was seen as necessary and important. When access cut across this loyalty, the child was likely to refuse to see the non-custodian parent. Officers described how they would work with the custodian parent and the child to make it possible for access to take place without the child feeling disloyal to either parent. However, 5 officers considered that if the custodian parent could not cope with access, especially when he/she had a new partner and was trying to establish a "new unit", then it would be better if visits stopped.

(b) Warring Parents

When parents could not behave civilly to each other at the

3. See the description of the work of officers in Chapter 10.

beginning and end of access, and especially if they behaved badly in front of the children, this could be damaging to the children, according to all the officers. Officers described the work they might try to do with both parents (see Chapter 10), but about 3 officers considered that, until the temperature dropped, it was better if no access took place.

(c) Child's Reaction against the Non-Custodian Parent

Some children refused access because they were afraid of physical ill-treatment. One officer said that in cases of non-accidental injuries inflicted by the non-custodian parent, access should not be forced on an unwilling child. At least two officers considered that access should be allowed, but in controlled circumstances, e.g. supervised access.

The expressed wishes of the child with regard to access were given high priority. One officer was prepared to accept and act on the wishes of 5 year old children, whereas 10+ was the usual age mentioned by officers. Two officers said it would be intolerable if a screaming child was forced to see the absent parent. However, on further questioning neither officer had ever known a child to get into this state at the prospect of a visit.

One cause of a child's reaction against the non-custodian parent, which was referred to by 2 officers, was the failure of the non-custodian parent to turn up when visits had been arranged. These officers considered that such parents should not be allowed to visit. Another cause referred to was the indifference of some children to the absent parent, and their reaction against visits which interfered with their activities. The wishes of the children would be taken into

account in these circumstances too.

(iii) Evidence of the Damaging Effect of Access

Many officers distinguished between the custodian parent's report of the ill-effects resulting from access, and their own assessment of damaging effects. These officers expected some degree of upset in the child after visits, resulting in behaviour problems, especially in young children. The symptoms of damage referred to by half a dozen officers were bed-wetting; loss of bowel control; temper tantrums; and a decline in school performance. Officers relied on their experience to assess the degree of disturbance, and their judgement to decide if access was the cause of the problem. It was rare for psychiatric examinations to be requested on the child before an officer recommended to the court that access should stop. No officer had ever done so, although one officer had sought psychiatric advice when in doubt about allowing access to continue. However 2 officers stated that they had never come across a case where the child's reaction was such as would warrant applying to the court to delete access, and all the officers agreed that it was rare for courts to take this step. One officer remarked that unless the access benefited the child, it would die out naturally.

A number of officers referred to the pain suffered by children who wanted to see a non-custodian parent who chose not to visit. In one specific case a boy under a matrimonial supervision order blamed himself for his father's refusal to visit. One probation officer had come across a number of criminals who had lost contact with their children. He claimed that they always expressed regret at having done so.

2. How Much Access?

The officers were agreed that weekly access was best, with informal arrangements being made by the parents. The general view was that the access should last all day, although 5 officers said that younger children needed access for shorter periods. One officer was concerned that if access took place more frequently, the child's security could be threatened. School children might be unsure which parent they were going home to that night. Another officer said that the amount and frequency of access depended on whether there had been a strong and persistent relationship with the non-custodian parent before the breakup. Seven officers criticised the Saturday afternoon type of access when the non-custodian parent wandered around the park with the children, or provided a variety of outings and treats. The custodian parent often resented the fact that she/he could not afford these luxuries, while the non-custodian parent found these outings artificial and expensive. In general, the home of the non-custodian parent was considered a better place for access unless it was highly unsuitable. In this setting more normal parenting could take place. Another officer pointed out the advantage of access taking place in the home of the non-custodian parent, as the children were in familiar surroundings. However 2 officers added that this type of access was satisfactory only if the custodian parent was prepared to trust the visiting parent, and leave the child alone with him/her. Another officer commented on the importance of the child and the non-custodian parent participating in activities together.

Defined access was not considered desirable by most officers unless it was the only way to enable access to take place. The main criticism was its inflexibility. Three officers remarked that parents often believed that they had to stick to the letter of the law, and never vary the access times. As the interests of the children developed, the

access times became a burden to the child, and the child resented having to go. One of these officers suggested that the access should be on alternate Saturdays and Sundays, to allow the child some manoeuvreability. One officer had to reassure two parents that it was alright for them to make some minor alterations in the defined access, for the convenience of the child and both parties. One officer had experience of a parent who kept the children at home and available for the non-custodian parent who failed to turn up for many weeks. Eventually the officer told the parent to let the children go out and play. One officer spoke of an advantage of defined access. The child was relieved of the fear of disloyalty to the custodian parent if he/she had to go at the specified times. Another officer remarked that parents often liked defined access, as they knew where they were and what was expected of them.

Staying access at weekends and during holidays was considered desirable by 10 officers, especially for older children. The age of 10 upwards was mentioned as a suitable age. One officer said that for very young children bedtime should follow the normal daily pattern, and staying access was therefore inappropriate. Besides age, geographic considerations were raised as important considerations. Four officers added the rider that the children must feel comfortable with the arrangements. Young children might enjoy holidays with the non-custodian parent and one officer expressed the view that living together was the best way to preserve the existing relationship.

3. Access Problems and Assistance Given by Officers

Various problems over access were recounted by officers. Two officers had encountered objections to access taking place in the presence of the non-custodian parent's co-habitee, particularly when the co-habitee

was considered to have been the cause of the breakdown of the marriage. Step-parents were reported to object to access as these visits made it more difficult for them to gain acceptance as the new parent. One officer had experience of a custodian parent getting very alarmed at the remarriage of the non-custodian parent, as she feared that this parent might apply for a transfer of custody. Three officers had cases in which the custodian parent was afraid that the child would be kidnapped during access, and many other officers had come across this fear. One officer explained that non-custodian parents sometimes used this as a threat, even though they had no intention of carrying it out. Another officer reported that custodian parents sometimes threatened their children that if they did not behave they would be sent to live with the other parent. Many officers had received complaints from parents that the child was upset after visits had taken place. One officer had experience of the children being left with the grandmother during access periods, while the father went out with his girlfriend. Officers had received complaints from both parents about difficulties in making convenient arrangements, and poor timekeeping. Misunderstandings between parents were reported when the children played one parent off against the other, and the parents accepted the child's version of events without question. The exercise of authority by the non-custodian parent was identified as a cause of problems between parents. Non-custodian parents were unsure whether they were allowed to admonish their children during access; if they did so, they were warned by the custodian parent that the access would be stopped; if they did not, the custodian parent complained that they were spoiling the child. One officer had a case in which the non-custodian parent complained that he was being forced into too much access: the custodian parent would fail to turn up to collect the children for some hours after the prearranged time. Two officers reported cases of children making extra secret visits to the non-custodian parent, who encouraged them to deceive the custodian parent.

Many of these difficulties were considered to result from one or both parents being obstructive and continuing their battles through the children. In some cases however the insecurity of the custodian parent and perhaps his/her new partner was thought to give rise to anxieties, many of them no doubt groundless. One officer spoke of a conscientious custodian mother who went through agonies while the child was with his father in case the boy should decide he would rather live with his father. Custodian parents also needed reassurance when access was proposed after a gap of some time.

Work might be carried out during the preparation of welfare reports for the courts, but was more likely to occur under a matrimonial supervision order. The approach of officers to working with parents and children on access problems will be described in Chapter 10.

It was rare for either the Probation Service or Social Services to be approached for voluntary help with access problems. Whether help would be provided would depend on the availability of an officer prepared to take on the work. Many officers said they would not be able to take on extra work outside their statutory commitments. A common response was that such voluntary applicants would be referred to a solicitor. About half of the officers spoke of the need for a service to help people to sort out their disputes when they separated, and referred to the Bristol Conciliation Service with approval.

D. WELFARE REPORTS

1. The Request for Welfare Reports

The term "welfare reports" covers reports called for by the

court on custody, access and satisfaction. A custody report considers which of the two contesting parents should be given custody. Two senior probation officers said that most custody reports recommended that the children should remain with the parent they were living with at the time the report was prepared.[4] One officer remarked that in some contested custody cases, when one parent was not seeing the children, the reporting officer might try to set up supervised access visits in order to make a recommendation on custody.

A report on access considers whether access ought to take place, and if so, how often. A senior probation officer considered that welfare reports usually supported the continuation of the existing access arrangements, when access was taking place at the time the report was prepared. Again, supervised access was occasionally used to monitor the access.

A Satisfaction report is requested in order to satisfy the judge that the arrangements for the children are satisfactory or the best that can be devised in the circumstances. A senior probation officer said he could not recall any satisfaction report in which the reporting officer had not been satisfied at the end of the day.

The officers agreed that custody and access reports were likely to be requested when there were disputes over these matters. Satisfaction reports were ordered when allegations were made about the custodian parent which the court considered ought to be investigated further, and they were likely to be ordered if the party was known to be involved with Social Services or the Probation Service. Two officers remarked on the greater likelihood of welfare reports being requested before fathers were given custody, and one said that this was especially so if the father had teenage daughters living with him. Three other officers would not be

4. This tendency for reports to recommend the status quo has been remarked by a number of research studies, such as the Oxford study (1977:18)

surprised to find that welfare reports were ordered more frequently when fathers were given custody.

One officer was concerned at the difficulties that could arise when a welfare report was prepared because some of the findings might be relevant to the decision on irretrievable breakdown:

> The problem for us is that the wife is often saying that the husband is unsuitable to have the children because of X Y Z, and X Y Z are things that are relevant to who is separating from whom. I know that the doctrine of the matrimonial offence is not around still, but in terms of the irretrievable breakdown of the marriage, matrimonial offences are still taken into consideration. As allegations are often disputed, a lot of officers feel that it is quite difficult to get in at that stage, because we get hold of information that may be relevant to the actual dispute about the marriage.

Presumably the respondent would be challenging the fact cited, such as S 1(2)(b), and also contesting custody. The custody investigation might bring to light information that was relevant to the decision about irretrievable breakdown.[5]

Three senior probation officers were concerned by what they considered to be the improper use of welfare reports by solicitors. This took two forms. Welfare reports might be requested by solicitors, particularly in the magistrates' court, before they had done any work on the case or when they were not fully instructed. One Divorce Court

5. It would seem that any information obtained by the reporting officer regarding the irretrievable breakdown of the marriage would be confidential and excluded from the report, just as information regarding possible reconciliation is excluded, unless both parties consent to its conclusion (S 12(7) DP&MCA 1978).

Welfare Officer in another area remarked that she was lucky because the Registrar in her area refused to order welfare reports until the solicitor presented him with an affidavit giving reasons why a welfare report was necessary. The other practice complained of was that solicitors sometimes withdrew their clients from cases in the Magistrates' Court when welfare reports were unfavourable to their clients, and took the case to the divorce court where another welfare report might be ordered. This practice was seen as not only time-wasting as far as officers were concerned and frustrating for the other party to the suit, but also the interests of the child might not be served.

There was general agreement among probation officers and social workers that the same officer ought to write the welfare report on both parents in contested custody cases even if one parent lived some distance away.[6]

2. The Preparation of Welfare Reports

The usual time taken by probation officers for the preparation of welfare reports is 6 - 8 weeks although satisfaction and access reports may take less time.

One probation officer concerned with the training of officers referred to four stages in the preparation of custody reports:

> Have four stages in your enquiries. In stage one, you go in and explain who you are and what your job is. Then ask them to tell you how they see things and how they feel about things. This is the basic stage, and it is done without any intrusive questioning

6. See the discussion on the preparation of welfare reports by one officer in Chapter 2.

at all. Stage two is trying to fill in the gaps that listening has left you. This is where the art of interviewing comes in. My golden rule is to avoid direct questions. Ask them to continue to tell you more about it, but just push a little and say "what do you mean by that?". The aim is to try to allow the parties to give you the fullest possible picture. Stage three is a much more active stage, where you are really starting to bounce the thing about a bit and to put the pressure on a bit. You say things like "I have listened to everyone involved, perhaps more than you have done, and it seems to me that this is what is happening". You try to interpret what is going on and you try to identify the needs of all the parties involved as a negotiating exercise really. Also you are testing out how far the parties are able to move towards this magical goal of taking full account of the needs of the child. Stage four is when you pull it all together, formally, for yourself. You should be taking notes and building up the picture for yourself as you go along. This is the stage at which you produce something. There may be two phases within this last stage. First you sit down and think what should happen in the child's interest. Then you discuss what you are going to put in the report with the parents. You would help the parties to come to terms with the situation - a kind of mediation. I think that it would be most unfair, having gone through that intense personal process, not to do this.

He had this to say about the interviews with children:

With the child, it would be more a case of allowing the child to talk about its own feelings. You would meet the child on several occasions, and try to find out what the child really wants, knowing that the child may be torn. You may conclude that what the child really wants is for the parents to get back together, and I would

> say to the child that the way it looks to me is that there is no chance of that. So we would talk about how that child is going to live with that situation.

The excellent practices described by this training officer were not always used by the reporting officers when faced with the reality of preparing welfare reports.

In most cases, the reporting probation officers would not know the parties beforehand. Usually the first contact with the client was made by letter, when the officers explained their role and made an appointment. One probation officer described how she made her priorities clear to parents during the first visit:

> One of the first things that I make clear to the parties on the first visit is that, whilst I will try to be as understanding and as helpful as I can to both of them, I am not on either side but I am focusing on the children. That does not mean that you are not helpful and supportive. The adults concerned are most important because what you are doing will affect their lives. But your priority has to be the welfare of the children.

Unannounced visits were seen as a necessary part of custody report preparation by virtually all the officers:

> I think that we do have a right to ask to see situations spontaneously because inevitably people are going to put on an enormous act. But if you intend to make an informal visit, you should say to people when you start that you will make an unannounced visit.

Four other officers stated that they would tell the parents in advance

that they would call sometime when they were in the neighbourhood. Two officers said that they would make such visits only when necessary; when something did not seem "quite right". All the officers agreed that the first visit should not be unannounced.

Most officers considered that more than one visit to each parent was necessary. One probation officer said he would make a second visit only if he found he had missed out on some information, or not been able to go into the matter fully on the first visit. One Divorce Court Welfare Officer from another area was indignant when custody reports were prepared after only one visit:

> It makes my hair stand on end if you have a contested custody or access report to do, and you get some naive person who has done one visit to each party and thinks that that is it. In your conclusion you are stating something, and to do that after one visit to each party is astonishing and arrogant because you don't know the people. It could take half a dozen or a dozen visits in some cases.

Most officers saw each person at least twice when preparing custody reports and the visits lasted about 1½ hours. It was usual for officers to see the children and talk to them. Sometimes the children were seen separately and alone, but not always:

> If you have a family of children, sometimes they prefer to see you all together. You do whatever suits the particular case. Sometimes Mum will let the child go out for a ride with you, or go for a walk in the park. You have to take everyone individually. As a rule I would expect to see the children on their own, depending on the ages of the children.

This officer considered it desirable to see the children with both parties, if custody or access were in dispute. Sometimes parents refused to let reporting officers see the children:

> If a parent refused to let you see them, then that tells you something. I would never get into a battle royal over that one because their refusing tells you a lot. If it is obviously going to upset the child, then I would not pursue it.

The reporting officer may try to ascertain the wishes of the children with regard to custody and will take the views of the children into account, although they will not feel bound to follow the child's wishes:

> If the children are able to talk about it and they are not too threatened about it, I would try to ask them which parent they wanted to be with. The weight that I put on what they say varies. You pick up things, like the reasons that the children have for wanting to be with the other parent, while really they may be much happier with the one they are with. They may relate much better with one. Between the ages of 9 - 13 some of them will have made up their own minds.

It was usual for visits to be made to other people besides the parents and the children. The schools and the General Practitioner were almost invariably contacted. Sometimes relatives were consulted; babysitters and home helps; health visitors and medical social workers; and employers. One probation officer said he would ask the parents if they were involved with any statutory agency, or had a criminal record. He did not approve of the practice of contacting Social Services or other agencies behind the parent's back. A different view was put by a senior social worker. He was concerned about cases that slipped through

the net:

> Our dilemma is that very often the court may not ask for reports when we feel that it is necessary. The problem is to ensure that the courts are aware of our involvement and our concern when the divorce is coming up. The Probation Service do know of our involvement in cases of non-accidental injuries, but the system is not foolproof. Very often the contacts are only personal; there may not be contact at official level. There might be an argument for the courts to make enquiries of agencies when a divorce is pending, but there is the problem of personal liberty. We keep our ears to the ground and act accordingly. We try to let the court know at the unofficial level that we are involved and concerned. There is no formal way of contacting the court about these cases.

The reporting officer may take time to go over the report with parents, and nine officers stated specifically that this was their usual practice:

> It seems to me that it is good practice to give the people warning of what you are going to say. My line would be that you can argue with me and challenge me here if you want, and that is your right. But if you are still not satisfied with the report then you can challenge me at whatever level in court. I am giving you the chance to know what you need to know to instruct your solicitor. It gives parents a chance to think about it and to try to see why I am saying that. Also it is possible that you can have more negotiation when it is down in black and white. It affects people, and some people who have been having great difficulty in seeing the interest of the child, when they actually read these things about themselves, it has a very powerful effect. So there is a possibility, even at

> that late stage, that I might change my opinion if they gave me evidence to do so. If I have got facts wrong, then I must correct them. The report is really fact and opinion. If you want to try and make me change my opinion at this stage and can give me evidence to do it, then great. If in this last hour we can do something that will get us where I think we need to get, then that is great as well. I can have it typed in a different form. That is how I see the process.

Only one officer admitted to not discussing her welfare report with her client, and in that particular case she could not bring herself to do so as she was involved with the client.

Three other officers made clear distinctions between facts and opinions, but their discussions took place with the parents when the welfare report was finished, and not at an interim stage. The officers were clear that any errors of fact would have to be corrected but that matters of opinion would have to be challenged in court. One officer was prepared to add a rider to the welfare report if her opinion differed from the client's, and if she thought it appropriate and helpful to do so. Another officer stressed the need to back up her opinions:

> Our view in the service is that if you have an opinion, it ought to be backed up by facts, as far as is possible, or with experience of a particular kind of sentence being valid. The maxim for each officer is to write every report as though it was going to the Central Court of Criminal Appeal, which it ultimately could. Be sure of what you are saying and be sure that you can back up whatever you say.[7]

7. This officer was obviously referring to social enquiry reports in criminal cases, but her point about backing up opinions is also applicable to welfare reports.

When officers cannot find time to discuss the welfare report with the parents, they believed the solicitor would usually either show the client the welfare report before the court hearing, or discuss the recommendations with him. The officers were agreed that parents had the right to see welfare reports. However when the reporting officer had to work with one of the parties afterwards this practice might destroy the trust between the officer and the party which was necessary for further productive work to be done:

> I am not always very happy about it because you may be commenting on personal problems. Even though you may recommend custody to one party, you may comment on their dirty house and their unpaid bills. I think that the parties ought to know your recommendations, and some of the reasons why you think that they are unsuitable for whatever. But if you have to work with the case afterwards, there is no way that you can work with them when they have read the full report in some cases. You have built up so much animosity. Because the parents will see the report, I may still say things, but I would try to say them in a round-about way in the hope that I will deceive the parents but not the court.

One social worker was horrified to find that a client had received a copy of the welfare report through the post. She considered that parents should see welfare reports, but with someone else there.

One DCWO in another area personally checked all welfare reports prepared by other officers before the court hearing, but this was not the practice in the area of the study. It was usual however for the reporting officers to be able to approach their seniors for advice when preparing welfare reports.

The officers were agreed that recommendations should be made in welfare reports, including the desirability of supervision in appropriate cases. But not all recommendations were followed by the courts, they said. Occasionally a parent objected to a reporting officer on the ground of bias. One officer said:

> A client can object to a biased worker in theory. But there are quite a lot of good reasons why it does not happen. A client will feel that to complain is very prejudicial in itself, as the court will see the worker as an objective trained worker. I would feel very wary if I had to follow another officer to whom the client had objected. In practice it does not work out in that way. It happens in all sorts of unsatisfactory ways, like the client will say to his solicitor that the officer was an awful woman and he did not like her. The solicitor will be clued up to challenge that report fairly strenuously. I would like to think that judges, if they are really on the ball, will pick up this. In a case like that, it might be possible for the judge to read between the lines of the report what had been going on. After all, you do expose yourself when you write a report. I think that it is possible to see bias if you are astute enough. I think that a judge who was really doing his job would pick it up and ask for another report from another officer. It would not be done too often. After all you can't be objective when you write reports.

This officer discussed the training methods used to try to make the officers aware of the way their own experiences affected them:

> While we all carry through into our work our own biases, any obvious and blatant inability to look beyond them would be reason for disqualification from this work. I think that such a person would

be detected. We are being subjective whether we like it or not; we are making judgements. You must give evidence for your judgements, and not just the evidence of your own eyes and ears, but other people's too. As a student, your work is very carefully examined and criticised by the supervisor, and my line in any work of this sort would be to say "let's look at how much of your personal experience is affecting what you are writing here". I would go in at that level, and if the person can't tell me, I would say that they were in the wrong job. If you have not got that amount of self-awareness, and you can't expose your own prejudices, especially if you are a bit ashamed of them underneath, you are not suited to this work, where you have to come face to face with your prejudices and work with them. So if, in the process of their work, that theme was coming over time and time again, I think you would quite quickly get to the point where you would say that the person was unsuitable.

In general the officers considered that their welfare reports were respected and were fairly thorough.

The reporting officer did not necessarily appear in court:

I usually try to go to court with my reports, but it is difficult because we have no system here that tells us which day our case is coming up, unless we ring up and ask. Then dates are altered. If they wanted us, they could ring up the office, but we might be out visiting a client.

In some cases it was essential for the reporting officer to be in court because the contents of the welfare report were likely to be challenged. The usual practice appeared to be that the reporting officer would leave a telephone number with the court so that he could be contacted if required.

Most officers did not have more than one custody report to prepare at any one time, although one senior probation officer said that it could happen, but was undesirable, as this type of work was very demanding. Officers might also have access and satisfaction reports to do, and in general the preparation of these reports was not dissimilar from the process described above. Satisfaction reports were expected to be briefer than custody reports as the officer did not have to weigh up the relative advantages and disadvantages of parents. Access reports had the disputed element, but were not so concerned about the child/ren's home environment per se.

The process of welfare report preparation may involve some conciliation.* One DCWO said:

> With any disputed matter, you are into conciliation. If I give someone 8 weeks to do a report and it is a disputed matter, they are expected to do some conciliation as well if, for example, there is a dispute over access. And you are into negotiation.

Another senior officer was doubtful about the success of attempts to lessen acrimony:

> If we begin in a situation of acrimony, I wonder in what proportion of cases we have reduced that acrimony so that it becomes readily agreed and no longer bitter. I would guess that we are not very successful in that and that officers are not particularly skilled in doing that. There is an element of skill in this that we have not developed to any extent.

Two other probation officers saw a conflict between the tasks of preparing welfare reports with conclusions and recommendations, and the task of

* For definition see p 46.

mediation with the objective of reducing disagreements between the parents.

The DCWO is a specialist probation officer but other officers preparing welfare reports are not. One senior probation officer said she would like to see the development of a specialist service dealing with matrimonial work, as not all the officers called on to do this work had the inclination and the skill to do it. None of the officers interviewed disliked matrimonial work.

The DCWO stressed that welfare reports are confidential and are prepared for the court. The parties and their representatives have the right to see these welfare reports. However she considered that it would be a contempt of court for a person to show his or her welfare report to anyone, even to a "favourite mother-in-law".

E. DISCUSSION

1. Practice

The Probation Service prepare most of the welfare reports in this city, and their underlying assumptions on custody and access influence their recommendations. Welfare reports generally took 6 to 8 weeks to prepare. Unannounced visits were regarded as necessary in most cases, and more than one visit to each parent was the usual practice. Children were often seen separately and their views ascertained, directly or indirectly, depending on their ages. Other people who might be in a position to provide useful information were often approached. Officers discussed the contents of their welfare reports with the parties prior to submitting them to the court, if this was practicable and seemed desirable.

The difficulty of working with some parties after they had read the welfare report was referred to by 2 officers. Officers might be required to appear in court for questioning on the contents of their welfare reports. It was usual for one officer to prepare the welfare report, particularly in contested custody cases.

Recommendations are usual in welfare reports, including the desirability of ordering matrimonial supervision orders in appropriate cases. These orders will be discussed in Chapter 10.

1. Underlying Assumptions on Custody

Mothers were assumed to be the natural persons to bring up children of all ages, but especially young ones, while fathers were expected to provide materially for their families. Nevertheless, the father's role in relation to the children was regarded as important; and when teenage sons and their fathers wanted to be together this might be considered a desirable arrangement, even when it involved splitting siblings. Officers would expect the father's circumstances and arrangements for the children to be investigated by a welfare report before he was granted custody. It was noticeable that the approach of officers to the question of which party ought to have custody in a contested case was not to list adverse characteristics which would "count against" a parent, but to consider the nature of the relationship which existed between the child and each parent. No differences were noted between the responses of probation officers and social workers.

3. Underlying Assumptions on Access

All the officers claimed that access ought to take place unless it was detrimental to the child, but there was a difference of opinion

about what constituted beneficial access. All but 3 officers were happy for access to take place if the child wanted these visits to continue. The factor which the dissenting officers considered might outweigh the child's desire for access was the effect these visits might have on the relationship between the child and the custodian parent, or his or her new partner. Social workers as a whole were less enthusiastic about access and more doubtful of its benefits than probation officers.

Access was assumed to be detrimental to the child when visits resulted in behaviour such as bed-wetting, loss of bowel control, temper tantrums, and a decline in school work. It was assumed by many officers that it was natural for a child to be upset after access, and this was not judged to be a contra-indication of continuing access. It was considered undesirable for a child to have to visit the absent parent when he or she was reluctant or refused to visit, for one of the following reasons: access resulted in feelings of disloyalty, possibly caused by sharing the hurt feelings of the custodian parent or having to listen to criticism of the custodian parent during access; the parties battled in front of the child at the beginning and end of access; the child disliked or feared the non-custodian parent; or the child was subjected to the painful experience of expecting visits which failed to materialise because of the unreliability of the visiting parent.

The officers were unanimous in their view that when access took place it ought to be as near "normal" parenting as possible in order to fulfil its purpose of continuing and building the child-parent relationship. Therefore they favoured frequent visits of about once a week; visits which lasted all day plus overnight staying access, except for young children; access in the home of either parent; and holidays with the absent parent. They disliked the artificiality of Saturday-type access with treats

provided by the visiting parent; and defined access, whose inflexibility was considered not to allow for the interests and needs of the children. One officer was in favour of defined access because it relieved the child of any feelings of disloyalty to the custodian parent when the child had to go rather than chose to do so.

The work of officers in relation to access took place under matrimonial supervision orders and will be described in Chapter 10.

CHAPTER 10 : MATRIMONIAL SUPERVISION ORDERS IN OPERATION

A. DATA

The Leeds Social Services Department arranged interviews with 13 of their social workers, who were chosen by computer because they had a number of matrimonial supervision orders on their books. Also two probation officers with these orders agreed to be interviewed. The working experience of these 15 supervising officers varied very considerably.

	Length of Service of Supervising Officers in Years					
	1½	2	2½ . . . 6 . . . 9			10 and over
Number of Officers	1	2	3	2	2	5

The views and practices on matrimonial supervision work of these officers, as well as the other probation officers and social workers listed at the beginning of Chapter 9, provided the data for this chapter.

B. THE MATRIMONIAL SUPERVISION ORDERS EXAMINED[1]

The 15 supervising officers had 104 matrimonial supervision orders between them on children from 37 families. The number of children supervised in each family was as follows:

1. The term "matrimonial supervision orders" includes supervision orders made under the MCA 1973; GOM 1971; and MP(MC)A 1960. Matrimonial supervision orders may be made under the DP&MCA 1978, but this Act was not in force when this study was undertaken.

	Number of Children in Family					
	1	2	3	4	5	6
Number of Families	11	7	5	7	6	1
Number of Children	11	14	15	28	30	6

There were 60 boys and 44 girls under supervision. Twenty-two of the children were 5 years or under; 50 were between 6 - 10 years old; and 27 were over 10. The ages of the remaining 5 children were not stated, although 2 were known to be under 13.

The length of time that orders on families were in existence, up to the time of the interviews, was as follows:

	Number of Years Orders were in Existence										
	Less than 1	1	2	3	4	5	6	7	8	9	U/K
Number of Families	3	7	4	5	5	3	6	1	1	1	1

The Divorce Court or the High Court imposed supervision orders in 26 cases and the Magistrates' Court in 9 cases. It was not clear which court made the orders in the remaining two cases.

The parents of all but one of the supervised families were working class.[2] Four of the officers stated that they had not noticed any class bias in matrimonial supervision orders, but three officers considered that orders were almost invariably imposed on working class, rather than middle class, families.

2. This classification was based on occupation, and covered the Registrar General's classification of groups 4 and 5.

1. Custody Orders

Mothers had sole custody of 12 families, fathers 19 families, and the children were divided between the parents in 6 families. In one of these cases, an interim custody order was made when supervision orders were imposed, and the children were divided between the parents at the time.

Mothers had custody of 36 supervised children, 20 boys and 16 girls, and fathers had custody of 68 supervised children, 40 boys and 28 girls. Thus there were matrimonial supervision orders on twice as many children in the custody of fathers.

Age and Sex of the Children

	5 & Under		6 - 10 yrs		10 & Over		Age U/K		Total
	B	G	B	G	B	G	B	G	
Custodian Mother	9	4	9	7	0	5	2	0	36
Custodian Father	5	4	18	16	16	6	1	2	68
Total	14	8	27	23	16	11	3	2	104
	22		50		27		5		

Of the 36 children in the custody of mothers, 13 were aged 5 years or under, 16 were aged between 6 - 10 years, and 5 were over 10 years. The remaining two children were under 13 years old. All five children over 10 were girls. Of the 68 children in the custody of fathers, 9 were aged 5 years or under, 34 were between 6 - 10 years, and 22 were over 10. The ages of the three remaining children were not given.

Rather more of the younger supervised children were in the custody of mothers, although the numbers of children involved was small.

All the supervised boys of 10 and over were in the custody of fathers.

2. Access Orders

Defined access orders were made in 7 cases, supervised access orders in 2 cases, and access arranged by the supervisor in one case. There were no orders denying access. In the 27 remaining cases "reasonable access" was ordered in 26 cases, and in 1 case, where the children were divided between the parents, no order for access was made to one of the parents.

3. Welfare Reports

Matrimonial supervision orders had been recommended in welfare reports in 36 cases, and in the last case the supervision orders were made at the preliminary hearing when interim custody was awarded, and before the custody report was prepared. Only 5 reports were prepared by social workers, and these cases were heard in courts outside the city. Although the recommendation to apply matrimonial supervision orders was followed in all these cases, it was not possible to find out whether such recommendations are always followed. However, the interviews with magistrates and court clerks[3] and divorce court judges[4] suggest that normally these recommendations are followed. Probation officers and social workers agreed with this view. One probation officer said:

> I personally have not found that supervision orders are imposed without recommendation. Nor have I recommended an order and found that it has not been put on. In general, our recommendations are likely to be taken up.

3. For the practices of court clerks and magistrates, see Chapter 7
4. For the practices of judges, see Chapter 8.

Two probation officers had experienced the frequent use of matrimonial supervision orders by judges in other areas when no welfare report had been prepared.

But the reporting officers did not always get what they wanted. In one case the officer recommended that an order for "no access" should be made, but the court made no order at all regarding access. In another case, the officer recommended that access be defined, but the court ordered "reasonable access". In a third case, an access condition was added to the order which, the supervising officer said, would have been resisted by the probation officer in court, as it involved the supervising officer being present each week when the changeover took place at the beginning and end of the access period. The custody recommendations of the reporting officers were not overridden in any of the cases examined.

All but five of the supervised families fell into at least one of the following categories: contested custody or access; previous involvement with the Probation Service or Social Services; and allegations made by the non-custodian parent about the parenting of the custodian parent. It is reasonable to expect that reports would be ordered by the court in these circumstances. The details of the remaining cases were as follows:
In the first case the father was given custody of 5 children, the youngest being a boy of 9.
In the second case the mother had "dumped" the four children on the father some months after the initial order was made giving her custody of the children. When custody was transferred to the father, supervision orders were imposed. The ages of the children ranged from 6 - 12 years.
In the third case, the father had a young couple living in his home, and they had looked after the girl of 6 years until he returned from work.
In the fourth case, a boy of 15 ran away from his mother's home and went

to live with his father, but there had been very little contact between father and son over the previous 14 years. The supervision order was imposed when custody was transferred to the father.

In all these cases fathers had the child/ren living with them, and in two cases large families of children were involved. The Probation Report Divorce Court Welfare (1976) found that reports were more likely to be requested in both these circumstances. In the third and fourth cases, the court would presumably have wanted to know more about the arrangements for the children; and in the fourth case they would also have wanted to assess the likelihood of the boy settling down with his father.

In the fifth case, an unmarried mother was living with the father of her 3 younger children when the custody order was made and a supervision order imposed on her eldest son of 7, who was not the child of the mother's then co-habitee. It is not clear why a report was requested in this case, but the reporting probation officer was concerned about the low standards of the family, so possibly the court had had reason to suspect that this was the case.

C. ALLOCATION OF ORDERS

The basis of the allocation of matrimonial supervision orders, either to the probation service or to the local authority social workers, was unclear. In some cases, the reporting officer recommended that either agency should supervise. But the courts may not allocate the case in the way that the reporting officer recommended, and did not do so with one of the supervised families. Both supervising probation officers had prepared reports for the court recommending supervision orders, and their

allocation. This is what one of them said:

> I think that the decision is fairly arbitrary. If it is a fairly young child, normally it would go to social services. In a lot of cases I think that it is recommended that it should go to social services. But I think that when there is a choice it would probably go to probation. But if there is a chance that the child might have to go into care, then it would go to social services fairly automatically.

One of the social workers, who had a case in which there were suspicions of non-accidental injuries to the child, said that all such cases were given to social services. A number of social workers thought that age was the major consideration in allocating matrimonial supervision orders, but that previous involvement with an agency was also a factor. One of the three cases supervised by probation officers involved a girl who was 5 years old when the order was made. The social services had been involved with the family intermittently on a voluntary basis beforehand. This case illustrates that the allocation of matrimonial supervision orders is somewhat flexible.

When matrimonial supervision orders are made by the judge without a welfare report recommendation, the supervising agency may not know that the order has been made until a copy of the order is sent to them by the court office. As the DCWO is not informed automatically of the dates of hearings[5] a matrimonial supervision order recommended by a reporting officer might result in such an order, and again the supervising agency might not know about it until a copy of the order was received. This should not happen in the magistrates' court as the duty officer is provided with a list of cases due to be heard each day in the

5. See welfare reports in the divorce court in Chapter 2.

domestic courts,[6] and matrimonial supervision orders appear to be made only on the recommendation of the reporting officer in these courts.[7]

On a number of occasions, the court offices in the divorce court and the magistrates' court were reported to have failed to send a copy of the matrimonial supervision order to the Probation Service.[8] Thus delays may occur in the allocation of these orders because of administrative delays and omissions.

There was a significant difference between the time taken for the order to reach the supervising probation officer, compared to the supervising social worker. The supervising probation officers made their first visit to the families within days of the order being made, whereas the supervising social workers made their first visits 2 - 4 months later. In three cases there was a breakdown of the system, and the first visit took place 1 year after the order was made in two cases, and three years later in the third case. None of the court papers had been processed in this last case. One supervising probation officer spoke of delays of at least 3 weeks before orders reached the Probation Service from the court, but informal contacts within the Probation Service resulted in the allocation of orders before the court papers arrived, so that the families were contacted quickly. This officer considered that there would also be informal contacts between the reporting probation officer in court and Social Services. However no order allocated to Social Services was put into operation earlier than 2 months after it was made.

6. See welfare reports in the magistrates' court in Chapter 2.
7. See the practice of court clerks and magistrates regarding matrimonial supervision orders in Chapter 7.
8. See the practice with regard to processing matrimonial supervision orders in Chapter 2.

D. PARENTS' RESPONSE TO MATRIMONIAL SUPERVISION ORDERS

Seven families resented the imposition of the matrimonial supervision orders. In five of these cases, the custodian parent objected to the intrusion into their lives; in one case, the custodian parent resented the stigma of inadequacy; and in one case, the non-custodian parent objected to the custody recommendation of the reporting officer, and was unco-operative with the supervising officer. However in 8 cases the custodian parents favoured the orders and were grateful for the support and assistance given. There were two cases in which the custodian parent objected to the order initially, and in one of these the supervising officer was "thrown out of the house" on the first visit. But a short time afterwards the parents came to appreciate the benefits of having the orders. In another case, the order was accepted at first but the custodian parent objected later on the ground that the supervising officer was putting pressure on the child to see the non-custodian parent.

Four of the officers interviewed remarked that parents often resented the orders because they were seen as carrying the stigma of inadequacy. One of these officers said:

> I think there is a lot of resentment. I have had a percentage of them who were saying that because their marriages had not worked, the courts were saying that, as they could not cope with marriage, they could not cope with their children either. They were being seen as unsuccessful people in the family sense.

Two of the parents were not aware that matrimonial supervision orders had been imposed until the supervising officer contacted them.

E. CUSTODY AND ACCESS DURING THE SUPERVISION PERIOD

1. Changes in Actual Custody

The children went to live with the non-custodian parent after the order was made in 9 cases. The children moved to the mother after the father had been given custody in 6 cases, and the child/ren moved to the father after the mother had been given custody in 2 cases. Three changes took place without the knowledge or involvement of the supervising officers. A supervising officer had not been appointed in one case when the legal transfer of custody took place one year after the original order was made. The other two families were under supervision technically, but the officers discovered that the children had moved after the event, following the "snatching" of a neglected child in one case, and after repeated moves from father to mother, to grandmother, and back again to father in the other case.[9]

2. Access During the Supervision Period

Access	No Access	Unknown	Dead Parent
15	19	2	1

Access was taking place in 15 families including "friendly" access to the home of the custodian parent in 3 cases. No access was taking place in 19 families. In 6 of these, mothers had not visited at all; and in a further 5 cases the mothers' access had lapsed during the period of the order. In 4 cases fathers had not visited at all, and in a further 3 cases, access had stopped during the period of the order. In one case, the custodian father was opposed to access taking place, and the children only saw their mother when she

9. For details of the changes in actual custody, see Appendix L.

returned to live with father for brief periods. However the mother does not appear to have tried to see the children during her absences. No mention was made of access in two cases, although it appears that access may have been taking place in one case.

F. THE WORK OF THE SUPERVISOR

1. Method of Working

Five of the officers claimed that these orders were given low priority in their case loads. However, when a case "blew up" very frequent contacts were made, sometimes more than once a week. The general pattern was that when there was considered to be a lot of work to be done, visits would take place weekly or fortnightly. However, once the situation stabilised, visits every 2 - 3 months were considered sufficient. It was clear that officers varied considerably in their involvement with these cases, and in their perception of what the supervising work entailed.

When no access was taking place, the supervisor did not keep in touch with the non-custodian parent. Thus the non-visiting non-custodian parent had no knowledge of the children's development and schooling from this source. Nor was any information obtained from schools passed on to the non-custodian parent when the supervising officers were in touch with the schools. When access lapsed, one supervising social worker contacted the non-custodian parent in an attempt to get access restarted.

Six supervising officers were in contact with the schools about the supervised children. One officer contacted the Child Guidance

Psychiatrist because the mother was worried about the effect of access on the children, and the supervising officer wanted to get a second opinion on the matter. In the event, the psychiatrist urged the mother to allow access to continue. It was not unusual for the supervising officer to liaise with the Health Visitor if young children were involved.

2. Access Work

The officers were questioned about the general approach to access work as well as detailed information about access work under matrimonial supervision orders.

When a case involved young children, the officers said they tended to work mainly with the parents, whereas officers said they worked directly with older children. When the custodian parent was refusing access without good grounds, the officers said they would work with the parent to try to persuade him/her that access was in the best interest of the child. One officer described how he would go about this task:

> In dealing with an intransigent parent, I would talk to that parent about their own experiences of parenting and of being parented, and what the importance of that was. If they have no sense of the importance of being parented - I never knew my father and it has not affected me - you need to explore that I suppose. But basically I think that the justification for the child needing to see its other parent must be something that has to come from personal experience; they have to reflect on that experience. The work is not about imposing my views on someone else: it would be exploring their own experiences and what justification they could find in that experience for there to be contact with the absent parent.

One officer pointed out that working with the child to dispel the image of the non-custodian parent, created in the child's mind by the custodian parent, was no solution, as it might create a divide between the child and the custodian parent, thus threatening the child's security. Work with the child had to wait until the custodian parent was prepared to allow access to take place.

When one or both parents were being difficult about making access arrangements, officers said they might act as intermediaries and arrange mutually convenient access times. One officer described this situation as highly unsatisfactory. His practice was to work with both parents to try to get them to communicate and be civil to one another. A similar approach was used by this officer when parents made petty complaints about access. He encouraged the aggrieved parent to discuss his/her complaints with the other parent rather than nurse these grievances, which were often no more than misunderstandings or mis-representations by the children. Another officer said that just as children play one parent off against the other in a family setting, so also the children of divorced parents do this after the separation.

Some officers were alive to the fears and insecurities of the custodian parent, especially the widespread fear of kidnapping, and they worked with these parents to relieve anxieties. Two officers were in favour of a period of no access to enable the custodian parent, and also the children, to work through their feelings. However, no officer spoke of the need to keep the non-custodian parent informed of the child's development and progress when no acces was taking place.

When a child was reluctant to see the non-custodian parent, officers might work to encourage the child to give access a try. One

officer said he would give the child reasons why he should visit the non-custodian parent; another described how he would work with a child who was resentful at the departure of the absent parent; another would stress the positive enjoyable side of access. One officer stressed the importance of not putting pressure on the child: his practice was to take things slowly and build up the child's confidence in him. Another said it was important not to dwell on the pain caused to the non-custodian parent by the child's refusal to visit. Two officers stated that they would not try to restart access if the child's relationship with the custodian parent was weak. A further 3 officers would not pursue access if the custodian parent could not cope with it, e.g. because of remarriage.

When there had been a gap of some months since the non-custodian parent's last visit, both probation officers and social workers said that supervised access might be desirable as a means of re-introducing the parent, or else the access might be monitored by checking with the custodian parent after the initial visits. One officer expressed the view that if the non-custodian parent had not visited for a long time, more harm than good would result from re-introducing visits.

A number of social workers were also prepared to supervise access in one of their offices during working hours to avoid the possibility of the non-custodian parent kidnapping the child during access, or to monitor the conversation between the child and the parent. One officer added that they had no means of monitoring what the custodian parent said to the child! Only 2 social workers were critical of supervised access, which they regarded as artificial and disturbing for the child. Probation officers were unanimous in their dislike of supervised access and only 2 or 3 sessions were thought to be desirable. After this, if access was not working, the practice should be dropped, they said. One probation

officer said that if supervised access was the only way in which access could be arranged, then the desirability of any access was in doubt.

The differences in attitudes to access among welfare officers was more apparent when the access work of officers with families under matrimonial supervision orders was discussed in detail. Access work took place with 12 families, and in 4 of these access was taking place at the time of the interviews with the supervising officers.

One officer, who supervised 2 of these families, was clearly committed to access, and worked to ensure that the parents co-operated over visits by counselling the parties. The officer who supervised the third family was uncertain about the effect on the children of access to an unorthodox father, and she arranged for them to be seen by the Child Guidance Psychiatrist, who recommended that access should definitely be allowed, and claimed that these visits were very important to the boys concerned. This officer continued to work with the mother over access. The officer supervising the fourth family was concerned about the deterioration in the relationship between the children and the stepmother with whom they were living, as a result of access taking place. The children were being pressed by their stepmother to give details of what had taken place during the access period, and the children responded by becoming withdrawn and secretive. The officer tried to persuade the natural mother to "let the child go" and stop visiting, except perhaps during school holidays, and restrict herself to writing occasionally. Both parents moved house at about the same time, and the supervising officer did not inform the mother of the whereabouts of the children. The mother contacted the supervising officer after some time, and the officer checked with the custodian father and the children before releasing the children's new address. The supervising officer considered that the break in access of

about 3 to 4 months was beneficial in that it enabled her to work with the stepmother about her reaction to access, and it enabled the children to develop a better relationship with their stepmother. At the time of the interview only 1 visit had taken place since the breakdown in the access arrangements. The supervising officer said she was not prepared to intervene in order to make the access arrangements, as she considered that this was up to the mother.

Four supervising officers who worked to facilitate access were unsuccessful, and the absent parents stopped visiting after a time. One social worker went to see a father who refused to see any of his children, after the boy who had been living with him returned to his mother and siblings. The boy was very upset and blamed himself for his father's refusal to visit. The social worker was unable to persuade the father to visit his children again, but she discovered later that his girlfriend had insisted on a complete break with the children. In another case a 15 year old boy was encouraged by the social worker to visit his mother after he went to live with his father.

Supervising officers were unhappy about access in 4 cases and arranged supervised access with the non-custodian mothers in 2 of these cases. The history of one case of supervised access was as follows. The 5 year old boy had been removed from his mother on a Place of Safety order because of ill-treatment by the mother's co-habitee. The boy was placed with his natural father under a care order, although this man had never lived with the mother and child. On the recommendation of Social Services, the father applied successfully for custody, and a matrimonial supervision order was imposed. Reasonable access was granted to the mother. However the social worker considered that the matrimonial supervision order gave her power to supervise access, and she permitted access

only at intervals of 3 to 6 weeks in a Social Services office. The mother wanted more liberal access away from the Social Services office, and applied to the court to have access defined. The supervising officer had written an access report for the court in which she recommended that access to the mother should stop, as she did not consider that the child got any particular benefit from the supervised access. In the second case supervised access was arranged in a Social Services office and the supervising officer told the mother to get in touch with her if she wanted another supervised visit arranged. The mother did not do so, and the supervising officer did not pursue the matter further. In the remaining 2 cases, both supervisors wanted access to be discontinued. In one case an access condition to have the changeover at the beginning and end of the access period in the office of the supervising officer was dropped soon after the order was made. The parents agreed to this, and also the supervising officer. The supervising officer was not happy about the effects of the visits on the mother, although the child enjoyed them. He felt that the mother was dominated by her ex-spouse and might allow him back into her life. When the father's visits petered out, the officer did not attempt to get access restarted. In the last case, the social worker was asked by the court to prepare a welfare report on access, and she filed the report in the court recommending that the mother should not be given access to her young children on the ground that the custodian father was a weak man, and his relationship with the children might be affected by visits from the mother. Before the court hearing took place the parties' solicitors agreed on access terms out of court, so the welfare report was not read by the court. However the mother did not visit regularly, and the access stopped after a while.

The differences in the attitudes of officers to access was apparent in the access work of these 12 supervising officers. Officers

were committed to access taking place in 6 cases: one social worker counselled the parties in 2 cases, to try to get them to communicate and make their own arrangements amicably; when one non-custodian father stopped visiting, the supervising social worker tried to persuade him to resume access to the children; and one social worker worked with a 15 year old boy to encourage him to visit his non-custodian mother.

Officers were unhappy about access in 6 cases: one social worker arranged for the children to be seen by a child psychiatrist to remove her doubts, as well as those of the custodian mother, about the possibility of access adversely affecting the children; 3 supervising social workers worked primarily with the stepmother/child relationship, to the detriment of the mother/child relationship (one social worker actively encouraged the mother to stop visiting, while 2 social workers permitted supervised access in Social Services offices only, and then reported on the sterility of the access); one probation officer feared that access might lead to a resumption of the relationship between the parents; and one social worker was afraid that access might damage the children's relationship with a weak father. The importance attached to access by these supervising officers was clearly less than that of the officers who worked wholeheartedly towards establishing visits.

3. The Custodian Parent: Inadequacy, and the Arrangements for the Children

Within this category were 6 families labelled "at risk", either because the children were considered by the supervising officer to be neglected, or because non-accidental injury to the children was suspected. There were two cases in which the custodian parent was said to be suffering from a psychiatric disorder. The supervising officers monitored the

condition of the children by regular checks with the parents, and in some cases by contacting the schools. In three cases, the custodian parent resisted the officer and there was very little discussion about the children. However, the officers continued to visit, although in one case the officer was unable to find out the whereabouts of the children for some time. The children moved to the non-custodian parent in two cases, and these changes were arranged by the supervising officer. One child moved back with his siblings, and this was with the knowledge of the supervising officer too.

Allegations had been made by the non-custodian parent about the parenting of the custodian parent in 5 cases. The supervising officers investigated these allegations and monitored the families. In three cases, the allegations were found to be without substance, and the supervision orders on one family were in the process of being revoked. The orders were retained in the other two cases, as the custodian parent was considered to need support.

There were 15 cases in which the supervising officers considered that support was needed: fathers had custody in 11 of these cases, and mothers in 4. Much of the support was concerned with practical matters such as housing and financial problems. Some officers alerted the parents to their entitlement to welfare benefits. However one senior probation officer said:

> The probation officer may not know about these rights as well as he ought. I have sometimes thought that it would be useful to have an officer who was attached to any large area who was really up to date on people's entitlement to various benefits, that we could refer to in doubtful cases . . . I am sure that we are not as well equipped in that as we ought to be.[10]

10. A probation officer specialist in welfare rights has been appointed in the city.

This support was considered to help the child/ren indirectly by relieving the custodian parent of some worries, thus leaving him or her more able to cope with the parenting of the children. In some cases the supervising officers had no concerns about the children or the parents, but kept the orders for other reasons.[11]

4. Cases Where Supervision Broke Down

There were breakdowns in supervision in 5 cases, either initially when the orders were made, or later during the supervision period.

In the first case, the order did not arrive with the supervising probation officer until three years after it was made. In this case the father alleged that the custodian mother neglected himself and the child, a girl of 3, and that she abused the child. When the first visit was made, the situation was entirely satisfactory, and the order is being revoked. It appears that the papers were not processed by the court, as the woman concerned had not received her divorce papers.

In the second case, no visits were made by the social worker to the family until the case returned to court for variation of custody. It was impossible to find out where the error had occurred.

In the third case, the parents were very resentful over the interim custody order, and the part played by the supervising officer in the making of this order. According to the present supervising officer, this social worker "kept her head down" and did not visit for one year. Visits are now taking place, and a custody report is being prepared so that the divorce decree absolute can be granted.

In the fourth case, the supervising officer failed to see the child for

11. For the officers' reasons for retaining orders, see p 294-95

six months, either because the mother was out when she visited, or because the mother said that the child was away or out. One of the mother's boyfriends alerted the father to the child's condition, and the father found the boy of 5 alone, and in a dirty neglected state. He removed the child to his home, and informed the supervising officer and the police. The present supervising social worker is satisfied with the child's condition, and is in touch with the father and with the school.

In the fifth case, visits took place for some time, and when the child moved to live with his mother the supervising social worker was satisfied that all was well. No visits took place for over 2 years. During that time the two girls, who were 2 and 3 years old when the order was made, were returned to their father and his co-habitee, as the mother found that she could not cope with them. The children did not get on with the father's co-habitee, and they were sent to the grandmother in Scotland for what was described as a prolonged holiday. The grandmother approached the Social Services for support, and later returned the girls to their father. The father's co-habitee approached the social services for support, and visits were resumed. The supervising officer is supporting the custodian father and his co-habitee, who are having financial problems, and is monitoring their new baby, as the standards of the family are low. No work is being done with the girls, who are 7 and 8 now. The officer considers that these girls are scarred and that work will have to be done with them some time. No contact was being made with the school.

G. PROBLEMS OF SUPERVISING

1. Lack of Powers

All but three of the officers interviewed had not experienced any difficulties, although two officers said they could envisage problems

arising, but would not want powers to deal with them. One officer remarked that a supervising officer could only advise the family; they had no powers. Another officer described his method of dealing with problems in this way:

> There is no real power; only persuasion and influence. Powers would not enable us to change the attitudes of the children which is what is needed.

Another officer remarked that a supervision order was only as good as the supervising officer and that she would not expect to find problems. This was the officer who had been thrown out of the house by a woman who had not realised that a matrimonial supervision order had been made, and was very annoyed by what she saw as the suggestion that she needed help with her children. The officer contacted the woman's solicitor and asked him to explain to his client that an order had been made, and that she must co-operate. The officer managed to build a working relationship with this woman in spite of this unpromising beginning.

Two officers thought that if they were given some authority, they would be able to work more effectively. One of them said:

> Sometimes you know that the person only needs to be a bit frightened to make them do what you want, so here it would be beneficial if we had some power. People look on the police in an entirely different way from the way they look on us, because the police have power.

One experienced probation officer was very much against the idea of "policing" his clients in any way:

> I don't see myself as a policeman, so I don't want powers. My job is about negotiations and developing trust and I don't think that power helps that very much; it probably harms it.

He and a number of officers said that the way to deal with problems was to take the matter back to court where the Judge would issue directions.

One officer said he had been unable to see the children in two or three cases over the years, but that this was unusual. An experienced social worker considered that the refusal to see the children would not prevent supervision taking place:

> I can't think that a parent refusing us entry to the house would be a problem because we have other means of protecting the child outside the matrimonial setting. If it came to our notice from schools or other agencies that the children were being ill-treated or neglected, then we would seek powers under the Children Act to protect the child.

The practice of this officer was to liaise closely with the schools and the health visitors.

But a problem can arise if the child under the supervision order is moved, and the supervising officer does not know the child's whereabouts.[12] This was the problem which one officer faced. He was supervising a family of two where non-accidental injuries were suspected, and when he called to see the children, the custodian mother said that the children were living elsewhere and refused to disclose their address. One child was returned home shortly afterwards and was taken into care under a Place of Safety order because of bruising. The mother gave the supervising officer the address of the other child at this stage. The officer returned to court and asked the judge for directions. The judge refused to see details of the various incidents of child abuse, or to make a Care order. He warned the officer that if he was unable to get a Care order

12. The parent of the supervised child is instructed on the court order to inform the supervising officer of any change in the child's address.

in the magistrates' court, it was no use returning to him for one. The judge also refused to see the mother or to issue any directions about supervising the family.

2. Confusion Over the Purpose of Orders

There was confusion about the purpose of making matrimonial supervision orders in cases where the parents were inadequate, but no more so than many other parents in the community on whom there were no court orders. Many officers remarked that these families were known to social services before the orders were made, and were being helped by them on a voluntary basis. They were unclear about what more was expected from them under the order, than they were providing without it. One officer considered that judges imposed orders in these cases because they are out of touch with the reality of some working class standards:

> It seems to be the case that when these people appear before the court the judge slaps orders on them - either matrimonial supervision orders or Care orders - and it seems to be based more on the material standards, rather than the emotional support that is needed for the children; whilst these are the cases that we are coming into contact with every day. I think that the judges do not see quite so much of this type of life, and when they do, and it is brought to their notice, they throw up their hands in horror and make these kinds of orders.

There was also confusion about the differences, if any, between certain matrimonial supervision orders, and supervision orders imposed in the juvenile courts. Five officers stated that they worked their matrimonial supervision orders in exactly the same way as they worked their

juvenile supervision orders. One very experienced social worker considered that matrimonial supervision orders were used in circumstances similar to, but less severe than, cases where supervision orders were applied in the juvenile courts. Thus the supervising officers interpreted their role in terms of preventing the children from becoming future criminals. Whether this was what the judge or the magistrate had in mind, or what they had in mind when the order was made, was impossible to tell.

When orders are made, the judges and magistrates do not give any indication of what they consider to be the task of the supervising officer. All but one of the orders was made on the recommendation of the reporting officer in court, and to some extent the officers' reasons were contained in the reports. One officer considered that judges in general understood the reasons given by the reporting officers, but that magistrates varied in their understanding.

The supervising officers had not prepared the court reports in any of these cases, and a number of them disagreed with the recommendations in particular cases. Because they considered the order to be inappropriate, they did not know what work they were supposed to do with the families concerned.

No attempt was made to find out whether the supervised families saw the purpose of the orders in the same light as the supervising officers, but supervising officers remarked on the difference between their own conception of the purpose of the orders, and the way that certain of the families used these orders. One officer said that some families thought of the order as providing them with an ally against their former spouses, and another remarked that custodian parents saw the purpose of the order as related to their interests rather than the interest of the child. The

discrepancy was apparent in one case where the supervised family were in favour of the order initially, but turned against the supervising officer when they realised that she was working to establish access for the child to the non-custodian parent. One officer considered that in certain cases the work that was required with the custodian parent was of a psychological nature, which the custodian parent could not understand at the time the order was made. He gave an example of a father who was given custody of a girl and who had very strong anti-feminine feelings. The officer felt that he understood how this man's upbringing and experiences had led to these feelings, and that his role was to work with the father to help him to understand these feelings, and change his attitudes.

This confusion about the aims of the matrimonial supervision orders resulted in confusion over how the orders were to be operated. Three officers mentioned the advantage of having a time limit on orders, as objectives were identified and work was concentrated on particular problems. A number of supervising officers were unclear about what kind of work they were supposed to be doing. One officer also said that she had experienced difficulties working with these matrimonial supervision orders because she came across so few of them. Over a period of time she had developed her own technique for dealing with them, but her methods may have been quite different from that of other supervising officers.

The structure of both the Probation Service and the Social Services is such that every officer is responsible to a more senior officer. However the advice given by the senior officers in relation to matrimonial supervision orders may vary considerably, and will be related to the experience of that senior. In some local offices there appeared to be a much more standardised approach to the operating of matrimonial supervision orders than in others.

The officers were asked their views on the usefulness of matrimonial supervision orders for facilitating access. A number of experienced officers considered that these orders, in relation to access, were made only when there were problems between the parents:

> I have never had an access problem where the parents had separated cleanly as it were. If they have positive views of each other, there is no problem really.

Another officer recounted his method for re-establishing satisfactory access:

> I would see myself first of all as taking things slowly and trying to help the parties to take things slowly. I would want to get the steam and the heat out of the situation following the court hearing. Then I would gently explore what access means, not only to the person who is demanding it, but also to the other people. If Dad is saying that he wants to see the children because they are his children, then on the one hand I would want him to acknowledge that feeling, but then make him look at the implications of seeing those kids, perhaps after five years' gap. What do the children feel about it? Does he know what they feel? Or is it just how he feels about it? And take the thing pretty gently. You are talking about powerful emotions, and I would not rush in saying that there is now an order for access, and that Dad has to see the children once a week right away. I think that we sometimes get into trouble over this, because the courts and the solicitors expect that the order has been made, and this chap has been appointed to see that the order is carried out. Now my line would be that I should work towards access as an end rather than simply enforcing the order just like that.

Three supervising officers considered that matrimonial supervision orders were a good way to facilitate access, but other officers had reservations about whether this was the best method of dealing with such problems:

> I think that often there can be a good case made out for somebody neutral being involved somewhere along the line. Whether it should be a matrimonial supervision order, I don't know. But in the interests of everyone concerned, you need someone who is not emotionally uptight about it.

One officer spoke of the waste of time when officers were involved in access disputes; he considered that the parents needed to use a bit of common sense. Another officer remarked that work over access cut across the other work that the officer was doing with the family. He advocated the widespread introduction of conciliation services* to deal with access problems. At least 6 other officers recommended such a course of action.

One officer saw his role as an intermediary, facilitating and monitoring access only when it was taking place. He did not see his role as including re-establishing or encouraging access. His reservations seemed to be related to his unease about deciding on the desirability of access. Another officer was also uneasy about acting on the assumption that access ought to take place. Both officers considered that the onus lay on parents who were not getting access to return to court, where the decision would be made as to whether access ought to take place or not. Once the principle was determined by the court, the officers were prepared to work within that decision.

* For definition see p 46.

Four officers stated that during the course of the matrimonial supervision order they were very likely to have to deal with an access problem at some time:

> Of the 40 cases where I have had to supervise over the years, very few cases did not have access problems to sort out during the time of supervising. I think that most families that split up have some problems over access at some time. The presence of the supervision order provides families with someone to whom they can go. That is the good thing about these orders; it can avoid something far more serious, as the child might then be in the middle of two warring factors.

This point was illustrated by one of the supervised families in which an order was imposed which had nothing to do with access, but during the supervision period an access problem arose.

3. Revoking Orders

Three senior probation officers spoke of the concern felt within the service about supervising officers keeping matrimonial supervision orders unnecessarily. One officer said that the main work under these orders was usually done within a year or two and that the order should not be retained unless the supervising officer was doing something specific. Two of the supervising social workers remarked that there were no outstanding problems in a particular case, but they did not know what to do with the orders. At least one social worker thought that the onus was on the parents to return to court to have the case revoked. One senior social worker considered that some officers kept matrimonial supervision orders unnecessarily because of their fear of being questioned about their actions, and the

fear that problems might arise in the future. The criticisms of social workers that have appeared in the press had resulted in hesitancy and uncertainty on the part of some officers, he said.

Orders may be kept on where there is no problem with the child on whom the order is placed, but there may be a problem elsewhere in the family. One supervising officer spoke of a case where she retained the order so that she could keep an eye on a boy who was never subject to a supervision order. He had been in care, and the care order had been discharged when he reached 18.

A technicality of the procedure for revoking orders might make officers reluctant to return to court. One senior probation officer in another area spoke of the problems that can arise because some judges require the consent of both parties before they are prepared to revoke matrimonial supervision orders:

> It can be that the officer has only got the consent of one parent, because the other party might have the right of access, but does not take it up. He may have been out of contact for a couple of years. Everyone is perfectly happy. They are doing well, and Mum is coping well, and there are no problems. But everyone is frightened of contacting Dad for his consent because if you bring him to light this could mean problems, either because he is violent or because he gets drunk.

A former leader of the magistrates' probation team in the city explained that the chief clerk in the magistrates' court felt that both parties should be notified of the intention to end the order, and had the right to come to court to make representations about it. It might be difficult

to contact the absent party, but a number of officers were uneasy, not only because the non-custodian parent might be undesirable, as suggested above, but also because they preferred to "let sleeping dogs lie".

A discrepancy was found between the practices of revoking matrimonial supervision orders in the probation service area in which the city of the study is located, and the national figures.

Matrimonial Supervision Orders Revoked in 1975[13]

	Local Area		National
Time Expired	176	60%	26%
Discharged - no longer necessary	104	35%	65%
Converted to L.A. care	12	5%	9%
Total	292	100%	100%

It was not clear why matrimonial supervision orders are held until they expire more often in this area than in the country as a whole.

4. Unfamiliarity with the Law

Social workers in general felt themselves to be short of knowledge of the law and the working of the court. One supervising officer

13. National percentages obtained from the Probation and After-Care Statistics (1978). Local figures were obtained from the published statistics for the work of the area (1975), and percentages were calculated from these figures.

said:

> I have only been working for 18 months but I do feel short on my knowledge of the law. I have not had much experience and my course did not give me much idea of the law. Until you are involved with it, it doesn't mean much. I am fascinated by the law; I try to pick up what I can as I go along. I don't feel that the course prepared me in any way for the legal side of it.

In one office a supervising social worker was told by her senior that there was no machinery for revoking matrimonial supervision orders, and it was not until the officer was in touch with the Divorce Court Welfare Officer on another matter that she found out the procedure for revoking orders. Only one social worker spoke with confidence about his knowledge of the law, and his office was in the Magistrates' Court building. Probation officers seemed much more knowledgeable about the law than social workers.

H. DISCUSSION

1. Practice

Matrimonial supervision orders were made by the courts following recommendations by reporting officers in all but one case, exhibiting the relationship between welfare report recommendations and matrimonial supervision orders noted by Griew and Bissett-Johnson (1975) and the Oxford Study (Eekelaar et al, 1977:20). Recommendations of reporting officers with regard to custody and access were usually followed too, although 3 access orders were at variance with the welfare report recommend-

ations. It was customary for the reporting officer to ask for the matrimonial supervision order to be allocated to one of the 2 welfare agencies, and the courts usually implemented this request.

Almost all the supervised families were working class, and a considerable number contained 3 or more children. Approximately twice as many supervised children were in the custody of fathers: there were more boys than girls, and about half of them were 10 years old or more. Rather more supervised children of 5 years and under were in the custody of their mothers, although the difference in numbers was small. The majority of supervised children with their mothers were 10 years old or less.

When matrimonial supervision orders were made, supervision commenced a few days later when the Probation Service was the supervising agency, but 2 to 4 months later when Social Services supervised. The supervising probation officer might already know the family from preparing the welfare report, and it was usual for probation officer supervision to commence before the court order papers were received. Social Services might not hear that supervision orders had been made until they received the court papers, or if they knew of the order's existence, they might not have any details of the family until the court papers were processed and forwarded to them. Probation officers reported that court papers took at least 3 weeks to arrive at the Probation Service office, and they would have to be forwarded to Social Services and the cases allocated to social workers. The Probation Service had to contact the court office and request that copies of orders be sent to them. The system broke down in 2 or possibly 3 cases when the supervising agency was not informed that an order had been made.

A breakdown in supervision occurred in 2 cases during the time

the orders were in force, and changes in actual custody occurred without the knowledge of the supervising officers.

No access was taking place in 19 of the 37 cases examined, and in all but one case these were the non-custodian parents' decisions. However, little effort appeared to have been made by supervising officers to encourage access, only one officer contacting the absent parent when visits stopped. Supervised access was undertaken more readily by social workers than probation officers. The artificiality of visits in Social Services offices appeared to provide one social worker with a reason for recommending that access should be discontinued, and another seemed to be discouraging access by these arrangements.

2. Underlying Assumptions in Operating Matrimonial Supervision Orders

The officers assumed that matrimonial supervision orders were made when the court considered that custodian parents needed support to help them cope with problems of parenting, and therefore this work was undertaken whenever the custodian parent was prepared to accept advice and assistance. However officers sometimes expressed doubts about the necessity of orders when the circumstances of the families under supervision were superior to other families visited by them on a voluntary basis. Therefore they treated these matrimonial supervision orders as low priority cases, and visited at intervals of 2 to 3 months, unless problems arose which required more frequent visits. Seven custodian parents objected to what they perceived as a stigma of inadequacy associated with these orders.

Officers also assumed that some orders were made to protect the child, either when there was a possibility that the child might be at risk,

or when the arrangements for caring for the child were not entirely satisfactory. Therefore they monitored the child's physical condition, often making contact with the child's school for reports on his or her welfare.

Officers were unsure of the purpose of some matrimonial supervision orders and therefore did not know what work to do nor whether it was appropriate to have orders revoked. Orders that were assumed to be for the purpose of supporting or keeping an eye on parents were sometimes retained when there was no problem or worry about the subject of the order, but the officer wanted to retain a statutory role in the family for other reasons.

The majority of officers assumed that parents who could not make satisfactory access arrangements were being difficult in order to get at their former spouses. Therefore there was some impatience and reluctance with involvement in access arrangements. Officers were unhappy about access taking place in 6 cases under matrimonial supervision orders. However, 5 officers worked wholeheartedly to facilitate smooth access for the sake of the children. A few officers considered that it would be difficult for parties to work together amicably after the breakup, and that parents needed to work through their feelings about the marriage and their former spouses. Constraints of other work commitments made it difficult for officers to offer parties a great deal of counselling time.

In general, working with the emotional problems of the parties regarding their past was not considered to be part of the officers' duties under matrimonial supervision orders, and this type of work was rarely undertaken. Supervisors saw themselves as "practical enablers" offering assistance to parents to help them to provide adequate parenting, or as

providing a protective function in relation to children. Matrimonial supervision orders were often treated in the same way as supervision orders made in the juvenile court, with supervising officers trying to prevent children from getting into trouble. The majority of officers seemed more at home dealing with this normal type of welfare work rather than with problems associated with marital breakdown, especially access work. Nor did officers consider it was their duty to contact non-custodian parents unless they were making access arrangements, and non-custodian parents were not kept informed of their children's education and development.

Only 2 officers wanted powers under matrimonial supervision orders, assuming that they might be able to force parents to change their ways if they were seen to have police-like powers. Other officers assumed that improvements in parenting might result from persuasion but not coercion, and were opposed to the idea of granting powers to supervisors. They relied on the provision that they could apply to the court for directions should they meet with obstructions in supervising children. The officer who applied unsuccessfully to the judge for directions appeared to want a care order, although he did not apply for one when the Place of Safety order lapsed.

No consistent pattern of operating matrimonial supervision orders emerged, and a number of officers said they would welcome the introduction of guidelines. Only 2 supervising officers were probation officers, and the working practices of these officers were similar to those of supervising social workers.

The views and practices of all the court personnel will be compared in the next chapter.

CHAPTER 11 : CONCLUSIONS AND RECOMMENDATIONS

The purpose of this study was to examine the causes of disputes, particularly access disputes, between parents following separation or divorce, and to assess the appropriateness of the legal and welfare provisions in response, in the city of the study. Tentative conclusions are reached and recommendations made.

A. METHODOLOGY

A major methodological problem encountered was the inability to examine certain documents: divorce court records, Notes of Evidence in the magistrates' court; and welfare reports. Certain information was not available: the number of orders made by the divorce court, and judges' reasons for making orders; magistrates' reasons for making orders; and the type of welfare reports ordered, and reporting officers' reasons for making recommendations.

It was possible to infer some of this information from other sources. The number of different types of orders made by the divorce court in the city was assumed to fall within the range of orders made by the divorce courts examined in the Oxford study. Thus it was possible to estimate the frequency of different types of court orders, including the number of welfare reports.[1] The number of matrimonial supervision orders made annually in the city is likely to vary, as the numbers involved are

1. See sections on Custody and Access later in this chapter.

so small.[2] Therefore the significant factor is that few such orders are made, rather than the exact number in any year.

Interviews with divorce court judges (3),[3] magistrates (6) and court clerks (12),[4] and welfare officers (24)[5] on their views and working practices provided general reasons for their recommendations and orders. Thus it was possible to compare the assumptions and working practices of court and welfare personnel from their general responses.[6]

Unfortunately very few welfare reports from the magistrates' court were available for examination, and in only a limited number of cases could the type of investigation be inferred from other data available. Thus it was not possible to know exactly how many custody or access disputes were taken to the magistrates' court in the city in the year under examination. Nor was it possible to know the reporting officers' reasons for their recommendations,[7] but this information was not vital to the study, as the assumptions and working practices of welfare officers became apparent in the examination of matrimonial supervision orders in operation.

Officers operating matrimonial supervision orders sometimes had no clear idea of the courts' purposes in making these orders, but for the client the significant factor was how the order was operated, and not the purpose of the judge or magistrates in making it. Therefore the availability of information on 104 matrimonial supervision orders in

2. The domestic court in the city does not publish annual statistics, but these are available for Bradford's domestic court and showed that the number of matrimonial supervision orders varied between 2.6% in 1977, and 6.7% in 1980 (Bradford Domestic Court Annual Reports 1977 and 1980).
3. See Chapter 8.
4. See Chapter 7.
5. See Chapters 9 and 10.
6. See sections on Custody and Access later in this chapter.
7. Research on the content of welfare reports is in progress under the direction of J. Eekelaar at Oxford.

operation was invaluable in enabling an examination to be made of the way these orders are handled.[8]

Thus the study was possible without the information in the documents which were unavailable for examination.

B. DISPUTES BETWEEN SEPARATED PARENTS, AND THE EFFECTS OF THE LEGAL ACTION TAKEN

One of the major findings of this study is that the occurrence of access disputes between separated parents is closely related to the attitudes of the parties to the ending of their marriages: among the 28 separated parents interviewed, access disputes took place in every case in which one party was unwilling to end the marriage (14 cases), and in only 3 cases in which both parties were willing to end the marriages (14 cases).[9]

Three types of behavioural responses were observed among the parties unwilling to end their marriages: after short marriages, the unwilling parties tried to retain the marriage partner, using access to do so; after longer marriages, the unwilling parties tried to punish their ex-partners, either making access difficult or denying it altogether; and when custodian parents with care of the children decided to end long and difficult marriages, against the wishes of their partners, they appeared to want a complete break, and denied access. However a number of custodian parents who were refusing access were not interviewed, but they had not allowed any access from the date of the separation, and it seemed likely that their refusal was linked to the marriage experience, rather

8. See Chapter 10.
9. For details of these interviews, see Chapters 4 and 5.

than to fears of the effect of access on the children. Thus the hurt feelings of the parties unwilling to end the marriages, and the anger of the willing parties who eventually made the break, resulted in disputes over access in every case.

In contrast, when both parties had grown apart and recognised that the relationship was over, access disputes occurred in 3 cases which were unrelated to any legacy of bitterness, hatred or hurt feeling from the past: 2 parties tried to keep the child for himself or herself alone; and one party feared the influence of the absent parent on the children, because of differences in values and life-style. The remaining parties communicated amicably to make access arrangements, although doubts and fears of non-custodian parents about their relationships with the children resulted in friction at times.

The disputes about access were sometimes fairly minor, such as complaints about poor timekeeping and making alterations to a child's clothing, but many disputes concerned the principle of access, and 5 custodian parents stopped all visits. Children were caught up in their parents' disputes and used by them to continue their battles in a minimum of 6 cases involving 2/3rd of the children reported by the interviewed parents to have shown some signs of disturbance before or after the separation. The majority of these children were over 5 years old.

The legacy of the past relationship was reflected in the access practices of the parties in the 2 groups: in the first group, in which one party was unwilling to end the marriage, there was no access to at least one child in 6 cases, and when visits did take place, overnight staying access was rare; whereas in the second group, in which the past was left behind, access was much more liberal, including the frequency of visits,

and overnight staying access.

The legacy of the past relationship was also reflected in the adjustment of the parties to the breakup of the marriages: six parents in the first group had not adjusted at the time of the interviews, including 3 men who were unable to see the children; whereas all the parties in the second group believed they had adjusted, and most were happy with their lives.

This finding on the attitudes of the interviewed parties to the ending of their marriages supports the hypothesis that access disputes are related to the marriage and breakdown, rather than to access practices per se. Yet the courts are designed to settle disputed matters, and not to deal with the underlying causes of disputes; none of the parties interviewed was offered counselling by the court, through welfare agencies, to help them come to terms with the breakup, and thus avoid further disputes. However 2 parties were given voluntary counselling by probation officers when they approached the service for help.

The marriage, separation and divorce patterns of the 2 groups of parents were similar except that violent outbursts were more frequent among the group in which one party was unwilling to end the marriage. Possibly frustrations and tensions overflow when one party is reluctant to end the relationship.

Other disputes of separated parents interviewed concerned maintenance and the disposal of the matrimonial home, and occurred among parties in both groups. Eight men were unwilling to pay maintenance to their ex-wives, including 6 who considered the orders to be unjust. The disputes about maintenance were rarely linked to the custodian parents'

refusal of access, and access was never refused because of non-payment of maintenance. The arrangements for the disposal of the matrimonial home were disputed in 2 cases, but in addition dissatisfaction was expressed regarding the arrangements by 2 custodian mothers. Both remained in the home which they considered unsuitable and too expensive, because of the fear that if they sold the house, they would have to repay the non-custodian parents' share at the time of the sale. It should be possible for custodian parents to move to less expensive accommodation without having to repay more than the difference in the price of the two houses at the time of the sale.

Besides the children who were involved in disputes by their parents, other children were reported by the parents interviewed to be disturbed. These children were predominantly in the 5 year old or under age group, including all the children in this group whose mothers were living at social security level. Also children were affected in each of the 4 cases in which the interviewed parent reported that there had been a history of violence during the marriage. There were no reports of children receiving counselling or other help from welfare officers, but one child was taken to a psychiatrist by his parents.

The small number of parties investigated made it impossible to know whether the relationship of variables was significant. However, when one or both parties were 27 or more when the marriages took place, disputes occurred more frequently after the breakup than when one or both parties was 21 or under at the time of the marriage. But all of the interviewees from social classes 4 or 5 were 26+ at the time of their marriages, so this might have been the variable linked to post-separation disputes. Violent outbursts also occurred in each case from social classes 4 or 5, but also among about half of the parties from social classes 2 and 3. Further research is necessary to establish whether these findings are random,

and if not, how they are related.

The courts adjudicated on a number of disputes among the interviewed parties. Custody was disputed at divorce by 2 couples, and welfare reports were prepared in both cases. However a compromise agreement separating the children was reached by solicitors before the hearing in one case, which was bitterly regretted by one parent later. Agreements reached by solicitors in these circumstances may not be in the interests of the children. Clearly a decision has to be reached about where children are to live in contested custody cases, but parents may be very bitter, hurt and angry by the custody decision, and the courts do not often follow up their orders with any kind of after treatment in the form of welfare officer involvement. Matrimonial supervision orders were not ordered in either of these contested cases at divorce.

Nine disputed access cases were taken to court, and welfare reports were prepared in every case. However, all the parties interviewed claimed that they were not offered any assistance in sorting out their differences during the preparation of these reports. Six orders were made defining access, and matrimonial supervision orders were added to 4 or possibly 5 children orders. In spite of court orders, 5 custodian parents refused to allow access. Parents who were unable to see their children were very bitter about the courts' failure to insist that access should take place. The hypothesis that when the principle of access is opposed by the custodian parent an access order does not enable the non-custodian parent to see the child, was true of these cases. Nevertheless this is not always the case. One custodian mother permitted access under the threat of a change of custody, although her child was disturbed and being treated by a psychiatrist. In spite of the unquestionable disturbance of this child, no matrimonial supervision order was made to

monitor the access, and make certain that the action of the court was not damaging the child by its insistence on access. In 2 cases in which matrimonial supervision orders were made by the court when access was defined, the supervising officers succeeded in establishing access on a regular, conflict-free basis, and the parents were very appreciative of the work of the officers. This supports the hypothesis that supervision orders may be helpful in alleviating stresses between parties and facilitating access. However, not all supervising officers did work of this kind. In one case in which Social Services were involved, the officer was reported to have made no attempt to re-establish access, although the court had made an order defining access.

Not all parents were prepared to return to court when they experienced problems over access, because of the ill-feeling that might result. One mother of 2 divorced sons commented on the lack of facilities for access when the non-custodian parent did not have a suitable home for the children, and suggested that centres should be available for parents, with cooking facilities and suitable equipment for the children. Little thought appears to have been given to the provision of such facilities, although nursery schools could be made available to visiting parents at weekends.

Among the parents interviewed, maintenance orders were made for half the wives, and for all the children in the custody of their mothers, but for only one family of children in the custody of their father. Disputes about maintenance tended to occur if the order was considered unjust, e.g. payments to wives after short marriages, or if another order of the court was resented, e.g. payment of maintenance for a child by the father who lost the contest over custody. Maintenance orders in general were recognised to be necessary. The interviewed parents agreed with the

hypothesis that children orders in undisputed custody and access cases are irrelevant, with the exception of maintenance orders.

The grievances of interviewed parents included dissatisfaction with solicitors, e.g. when they failed to challenge inaccurate statements in welfare reports; dislike of the practices of some welfare officers during the preparation of welfare reports, e.g. unannounced first visits; and criticism of judges during Children Appointments, e.g. for perfunctory questioning about the arrangements for the children, or for their attitude against fathers being granted custody.

The attitude of the courts to access was evident in the legal actions taken in disputed cases among interviewed parents, namely that access is desirable and ought to take place.[10] Access was defined and/or matrimonial supervision orders made with this objective. Unless there were doubts about the suitability of the non-custodian parent to have contact with the child, matrimonial supervision orders were not used to monitor access, even in cases where the custodian parent was convinced that access was harmful.

Court orders for access were also made in circumstances which may have been damaging for the children, i.e. when the parents used the children to continue their battles, often with no attempt being made by the court, through welfare agencies, to lessen the acrimony. Nor were welfare services used for this purpose following contests over custody.

Separating parents need to be helped to come to terms with their personal problems, not only for their own sake, but also for the sake of the children. Personal counselling is sometimes offered by Marriage

10. This attitude was apparent in the interviews with court personnel (see Chapters 7 and 8).

Guidance Services, but separating parents often do not know this, and it is doubtful if the existing agencies could cope with a large number of applications for counselling from separating couples. An extensive counselling service* is required, and separating couples need to be informed of its availability. This service might also be offered to older children who were shown to experience divorce as extraordinarily painful.[11]

However counselling parents is a long-term project; a mediation service* is also required to help parties resolve disputes, especially concerning access. The orientation of a mediation service is the achievement of negotiation between parties about specific matters, particularly those involving children. Some counselling may take place during this process, but the work concentrates on clearing the ground between the parties, rather than counselling per se. Without these services, court orders may be counterproductive in achieving their objective of protecting the interests of children.

C. ASSESSMENT OF THE ROLE OF THE COURT AND WELFARE SERVICES

1. Court Investigations and Practices

By law, the divorce court has to decide that a marriage has broken down irretrievably before granting the decree,[12] and relies on affidavit evidence to do so. It is very difficult to see how the court could discover that a party who applies for a divorce does not really want one; one case among the parties interviewed appeared to fall into this category, and was not picked up by the court.[13] Therefore the elaborate

11. See the effects of divorce on children in Chapter 3, pp 50-60.
12. See the legal requirements in Chapter 2.
13. See Chapter 5, p 88

* For definitions see p 46.

requirements for demonstrating irretrievable breakdown may be superfluous.

Registrars deal with property matters and determine the level of maintenance for wives and/or children when appropriate, but it is not the function of either registrars or judges to ensure that the custodian parent can manage financially. Many custodian mothers have never had to deal with the finances of the home, e.g. mortgage repayments and heating expenses, other than handling the housekeeping money, and they may have to cope with these problems on a reduced income.[14] Poor parenting has been observed among some custodian parents in the first year after the separation,[15] and it not unlikely that financial problems are a contributory factor. An information service is required, similar to that provided on a part-time basis in some areas by the Child Poverty Action Group, to advise parents on their welfare benefits, and to give advice and assistance on household management.

Children Appointments are supposedly designed to ensure that the interests of children are taken into account when their parents separate. These interviews are extremely short, and each judge has his own approach to interviewing parents. It appears that judges concern themselves with practical matters regarding the children, such as the arrangements for them before and after school and during the school holidays. However, this type of information is already contained in affidavit evidence, and children are vulnerable in other ways which are not investigated. Their emotional needs may be neglected because the parent looking after them is engrossed in his or her own emotional and financial problems, and it is all too easy for parents to overlook the effects of the separation on the children. Judges do not appear to concentrate the minds of parents on the children's emotional needs. Indeed these appointments give some parents

14. References to the financial effect of divorce are listed in Chapter 3 p 50
15. See the effects of divorce in Chapter 3 pp 50-60

the impression that the court has only a secondary and superficial interest in the children.[16]

A curious feature of Children Appointments is that only the petitioner is required to attend, whether this party is caring for the children or not; the respondent is permitted to attend but is not required to do so. It would be interesting to know how often both parties are present. The interviews are unsatisfactory whenever only one party attends. If the children are not living with the petitioner, the situation might arise that he or she had to satisfy the judge about the arrangements for the children in the absence of the parent with care of them. Presumably this does not occur often. However, when the party caring for the children appears alone, this parent is likely to get the impression that the court considers that he or she now has sole responsibility for the upbringing of the children. Indeed this may be considered desirable by some judges,[17] but from the children's point of view the loss of one parent through separation or divorce is not desirable.[18] The requirement that both parties must attend the Children Appointment, except in particular circumstances, e.g. when the whereabouts of the respondent is not known, would emphasise to parents the accepted legal view that divorce does not end parentage.

It might be more profitable if judges used Children Appointments to emphasise to parents the importance of working together over the children's upbringing, including access, and to discuss with them their proposals for doing so. The existence of counselling, mediation and information services might also be brought to their attention.

17. See Chapter 8, pp 209-210

18. See Chapter 3, pp 53-59

16. See the criticisms of Children Appointments by interviewed parents in Chapter 5, pp 119-120.

It should be possible for all separating couples to be supplied with a written document containing practical advice on parenting, and the addresses of local counselling, mediation and information services. In addition, courses similar to the Divorce Experience Course provided in Leicester by the Probation Service[19] might prove valuable.

Welfare reports were ordered by the courts in contested custody and access cases, and in certain uncontested cases.[20] Complaints were made by a judge and 3 senior probation officers about improper requests for welfare reports by solicitors who were inadequately briefed, or wanted to avoid advising their clients on the weakness of their applications for custody. In general, welfare reports were considered satisfactory by the court personnel, and usually their recommendations were followed.[21] A few criticisms were made by the parents interviewed, e.g. complaints about unannounced first visits.[22] The expertise of welfare officers was challenged by Sutton and King, who claimed that there was no internationally accepted discipline of Child Psychology, and that the assessments of welfare officers were based on individual values.[23] Medical evidence on access was reported to be presented to the court occasionally to support the claim of a custodian parent that access was detrimental.[24] None of the court personnel interviewed had any experience of medical evidence introduced to support the continuation of access, presumably because of the difficulty a non-custodian parent would have getting a child examined. Doubts were raised by court personnel about the power of the court to order medical reports on children, although the court might make a matrimonial supervision order to monitor access.[25]

19. Details of the course can be obtained from R. Straker, 38 Friar Lane, Leicester.
20. For further details, see sections on Custody and Access later.
21. See Chapter 7, pp 191-192, and Chapter 8, pp 220-221.
22. See the criticisms of separated parents in Chapter 5, pp 116-118.
23. See the reviews in Chapter 3.
24. See Chapter 7, pp 189-191 and Chapter 8, pp 221-222.
25. Access is considered in some detail later.

Matrimonial supervision orders are rarely made, and the examination of the operation of a number of them indicated that the parents of separated children were nearly all working class, and more often the separated children were in the custody of their fathers. This latter finding supports the hypothesis that the courts are more concerned when granting custody to fathers than to mothers.

The records of the magistrates' court in the city of the study, examined for one year, suggest that there are no major differences between the orders made in this court and the divorce courts investigated in the Oxford study, and that had the records of the divorce court in the city been available for study, the facilities offered by both courts might have been similar.

Certain practices of the courts were found to be unsatisfactory. Delays of 14 to 18 months in access variation cases returning to court were reported by 3 parents interviewed,[26] and ought to have been avoided. Welfare reports were not always seen by the courts, as cases were sometimes dropped when solicitors and their clients read them. Clearly this practice is undesirable. Practice Directions and rules were not always followed, e.g. the Divorce Court Welfare Officer was not informed automatically of the date of hearings when welfare reports had been ordered, and the court offices frequently neglected to send copies of matrimonial supervision orders to the Probation Service. These court procedures need to be enforced more rigorously.

There were legal doubts on a number of issues. One divorce court judge questioned the necessity of joint custody orders following the confusion over custody.[27] A number of magistrates' clerks doubted

26. See Chapter 5, pp 98, 101, and 102.
27. See Chapter 2, p 209.

the power of the court to order matrimonial supervision orders to establish or facilitate access.[28] One Divorce Court Welfare Officer considered that it is a contempt of court to reveal the contents of welfare reports to any person who is not a party to the proceedings or a legal advisor, including "a favourite mother-in-law".[29] However, one judge did not accept this strict interpretation of the rules.

2. Custody

Custody orders are peculiar in that legal adjudications are made by the court on a matter which is seldom disputed, and orders usually merely endorse the parents' decisions and the practical arrangements, which may have been in operation for some time prior to the hearing. In around 8% of cases in the divorce courts, welfare reports are prepared in uncontested cases (Oxford Study, para 4.6.). The reasons given by the judges and magistrates interviewed[30] for ordering welfare reports in these cases fall into 2 broad categories: doubts about the custodian parent; and doubts about arrangements for the children. The first category includes cases in which there has already been Social Service or Probation Service involvement, or allegations have been made about the custodian parent; and the second category often includes proposed custodian fathers, supporting the hypothesis that the courts are more concerned when granting custody to fathers than to mothers.[31] Presumably the purpose of welfare reports in uncontested cases are twofold: to decide whether it is advisable to grant custody to the proposed custodian parent; and to decided whether welfare intervention is necessary to monitor a family or provide support

28. See Chapter 7, p 195
29. See Chapter 9, p 260
30. See Chapter 8, p 219 and Chapter 7, pp 187-189.
31. See Chapter 6, p 157.

for the custodian parent. Reporting officers very rarely recommend a care order, and only occasionally recommend supervision.[32]

Supervising officers were sometimes bemused by matrimonial supervision orders in these cases: other parents who were judged more inadequate were not subject to any court order; machinery for investigating possible non-accidental injury to children operated whether the child was subject to a court order or not; and parents in greater need of support were receiving help voluntarily. None of the supervising officers interviewed considered that the purpose of an order had been simply to check the smooth operation of the arrangements for the children: they assumed there was some problem regarding the adequacy of the custodian parent or possible danger to the child/ren. Nevertheless, arrangements for the children might be checked as part of the wider task of keeping an eye on them. Therefore officers were unsure what work they were expected to do in these cases, and made an occasional visit to the family, unless they were called upon by the custodian parent to do something specific. Indeed, one suspects that the supervising officers were correct in their attitude, since legal machinery is available for protecting children at risk, and Social Services offer support to parents, and monitor cases of doubtful parenting. It seems that matrimonial supervision orders are being made on families in circumstances which do not warrant intervention under other legislation, and are unrelated to the breakdown of the marriage, and that these orders are retained for long periods.[33]

Custody is rarely contested; the Oxford study reported a figure of 6% (para 6.1.). It appears likely that the vast majority of contested custody cases in the city of the study are investigated by welfare reports.[34]

32. Welfare reports recommending supervision were present in all the matrimonial supervision orders examined.
33. See revoking matrimonial supervision orders in Chapter 10.
34. See the interviews with court personnel in Chapters 8 and 9.

The maternal presumption appeared to operate in practice, and often a father was expected to show why the mother should not be granted custody. Welfare officers claimed to examine the relationship of the child with each parent before making their recommendations. Nevertheless, it was clear that the most important factor in contested custody cases was which parent the children were living with at the time of the hearing.

The party who "loses" the custody battle does not get any help or encouragement from the court to continue a parenting role, except in the form of an order for reasonable access in most cases, or a matrimonial supervision order to avoid further disputes between parents in a very small number of cases. The option to make joint custody awards in the divorce court, or to grant parental rights, other than access, in the magistrates' court, is rarely acted upon. When parents agree which one of them is to care for the children, this decision is often taken to mean that one of them will continue active parenting, and the other will bow out, except as a visitor. This decision may be made unilaterally, e.g. when a mother leaves the matrimonial home with the children against the wishes of the father. There are no pressures in our society to persuade an absent parent to play an active role in the children's upbringing, or even to continue visiting the children. Schools are a case in point: reports are seldom sent to the non-custodian parent.[35] Yet the evidence of research on children of divorced parents suggests that they benefit from the involvement of both parents when amicable relationships exist.[36]

It might be wiser for courts not to make custody orders in most cases, thus leaving parental rights equally in the hands of both parents after separation under S 1(1) GA 1973. Parents would need to be educated about their responsibilities to their children following divorce,

35. See Chapter 5, p 124.

36. See Chapter 3, pp 55, 57, 58-59.

as described above. Any disputes between the parties about which should have care and control of the children, or about their upbringing, including access, could be heard by the court under the provisions of S 1(3) GA 1973, although parents might be encouraged to use the mediation services referred to above, before making applications to the court. Orders for care and control might be made at this time if the court considered it necessary to do so, and whatever parental rights the court deemed appropriate might be granted to the absent parent, e.g. the right to access.

3. Access

Court personnel viewed access as beneficial to the child in the vast majority of cases, and accordingly they made orders for access when they were requested to do so, except in very rare circumstances. Nevertheless judges were prepared to support non-custodian parents who considered a complete break to be desirable. It was usual for the magistrates' court to make an order for access in virtually all cases,[37] whereas the divorce courts make provision for access in approximately half the cases only (Oxford Study, para 5.7.). Although orders for access are made following separation or divorce, the court expects parents to come to mutually agreeable arrangements without the intervention of the court, and orders for "reasonable access" are the norm. Some impatience was shown by court personnel with the relatively few parents who returned to court with disputes over access.

The number of access disputes heard by the court each year is relatively small. Access was specified in the magistrates' court when initial orders were made in approximately 5% of cases following welfare reports in 55.6% of these cases, and about double the number of disputes was heard at variation, following welfare

37. See Chapter 6, p 151

reports in 81.5% cases.[38] In divorce courts the figures appear to be similar, although the Oxford study did not specify how often access was disputed in contested custody cases. Matrimonial supervision orders following access disputes appeared to be rare,[39] and access work was done with about 1/3 of the supervised families.[40]

The small number of access disputes heard by the courts does not mean that these disputes are rare. On the contrary, the interviews with parents who were co-operating over the children revealed that friction over access at some time following divorce was not unusual. Parents may decide not to go to court in order to avoid contentious court hearings which are not the most fitting prelude to the achievement of amicable relationships. Access orders were discounted by some parents interviewed. When there were no disputes, the orders were considered irrelevant; and when there were disputes, the courts were not always able to enforce their orders.[41] However, other parents were prepared to comply with access orders following disputes, including one custodian mother interviewed whose child was disturbed. The hypothesis that when the principle of access is opposed by the custodian parent, an access order does not enable the non-custodian parent to see the child was correct in some, but not all, cases.

In contrast to the almost unanimous approval of access among court personnel, the attitude of welfare officers to access was more ambivalent; social workers in general were less enthusiastic about access than probation officers, although some social workers tried very hard to

38. See Chapter 6, pp 131-134.
39. See Chapter 6, p 140.
40. See Chapter 10, pp 275-281
41. Four of the parents interviewed were unable to see the children in spite of court orders for access.

facilitate smooth access. Some officers considered that the child/step-parent relationship was more important to the child than access to a natural parent. Presumably the attitudes of officers were the result of their experiences of the effect of access on children in their day-to-day work, including their work with families under matrimonial supervision orders.

Research suggests that access is beneficial for children provided there is harmony between the parents, but when access takes place in contentious circumstances, it may be detrimental to the child.[42] There are two possible responses to this: the access should be terminated, or the parties should be helped to be civil to each other, and allow access to take place without strain for the children. A few officers saw the necessity for the latter course of action, and acted accordingly when matrimonial supervision orders were in force. But not all officers have the time, inclination or skill to adopt this course; nor do they all agree that it is their place to do so. Yet in the absence of this work with parents, the officers may be correct in concluding that access does more harm than good. These officers may do nothing to encourage access while operating matrimonial supervision orders, and may actually discourage it.[43]

Officers working to facilitate access might encourage custodian parents to allow access; work with children who were reluctant to visit; and make access arrangements when parents found difficulty in communicating. It was rare for non-custodian parents to be contacted other than to arrange access, and very few officers were prepared to encourage the absent parent to remain in touch with the children. Also, when access is deleted, the non-custodian parent has difficulty in finding out about the children's

42. See Chapter 3, pp 54, 55 and 58.

43. See Chapter 10, pp 279-280.

condition and development, and therefore cannot know when to return to court for an access order.

It is undesirable that the courts should make access orders in the following circumstances: when they are irrelevant, i.e. in uncontested cases; unenforceable, i.e. when the custodian parent is adamant that access shall not take place; or undesirable, i.e. when the child suffers because of access. No order should be made when access is uncontested, since the right to access is retained, with other parental rights, under guardianship legislation, unless an order of the court removes some or all parental rights.

At present, matrimonial supervision orders are often made for reasons unrelated to separation and divorce, and their operation is sometimes unsatisfactory because of confusion about their purposes, and because some supervising officers are not skilled in working with separated parents and their children. One hypothesis tested by the study was that matrimonial supervision orders may be helpful in alleviating stresses between parties and facilitating access, but that not all welfare officers have the inclination and ability to do this work. This was based on the assumption that counselling work with parties was one of the duties of supervising officers, but the majority of officers interviewed did not share this view; it was rare for parents to be counselled about their relationships with their ex-spouses. Access was facilitated by some supervising officers, although the degree of commitment to the achievement of this objective varied. Many officers were more comfortable dealing with the more usual type of welfare work. Matrimonial supervision orders could be used to alleviate stresses between parties by officers experienced in this work, but at present this service is rarely provided.

D. PARENTAL GUIDANCE ORDERS: THE ALTERNATIVE TO MATRIMONIAL SUPERVISION ORDERS

The name "matrimonial supervision order" is confusing because of its association with juvenile or criminal supervision orders; a more appropriate name is "parental guidance order"[44] and this name should be adopted. These orders should be operated by a specialist team of welfare officers, called parental guidance officers, trained in working with separated parents and their children.

These orders might be made in the following circumstances: to monitor the arrangements for the children; and following all disputes about the care and control of the children, the principle of access, or the upbringing of children.

Whenever there is doubt about the arrangements for the children, a parental guidance order might be made for a period of 4 to 6 months, followed by a Children Appointment, when the judge might sign the Certificate of Satisfaction if he was satisfied with the parent's arrangements, and with a recommendation from the welfare officer. This procedure could replace the present one of having a welfare report prepared, and ordering matrimonial supervision orders for an indefinite period. While the order was in force, the officer and the parent would be expected to work together to ensure that the arrangements for the children were satisfactory.

Whenever there are disputes about the children, parental guidance orders might be made with a time limit of no more than 1 year. Welfare reports would be necessary before the questions of care and control, or the principle of access were decided. At the end of the specified period,

44. This name was proposed by Hall, 1968.

the P.G. officer would apply to the court to have the order deleted, unless there were grounds for continuing the order for a further fixed period, and the order would either be renewed or deleted.

The work of the officers under these parental guidance orders would depend on the nature of the dispute. After a court hearing on care and control of children, parents are unlikely to be able to co-operate over the children's upbringing without outside help and encouragement. The officer might work with both parents separately and together, with the objective of enabling them both to meet and discuss the children's upbringing amicably, without the presence of a third party. Similar assistance might be required following any dispute about the upbringing of children. Access disputes present additional problems, when either the principle or extent are in dispute, and whether access is ordered or deleted.

If access is deleted, the officer should work with both parents for up to a year, and befriend the children. The work with the absent parents should include the following: helping them to cope with the loss of contact with the children; and notifying them if the situation is such that access might be resumed. The work with the custodian parents (i.e. parents with care and control of the children) should include the following: making them aware of the child's emotional needs, including the effects of the loss of a parent; and monitoring the children's condition and development; counselling them to come to terms with the past, and to cope with their present emotional, financial and day-to-day problems.

If access is ordered, the officer should do all in his power to establish a satisfactory access pattern as quickly as possible, if the separation has just taken place,[45] or work to re-establish access gradually,

45. The research of Wallerstein and Kelly (1980), reviewed in Chapter 3, indicated the importance of the access in the immediate post-separation period for establishing the long-term pattern.

if there has been a break in contact between the child and the absent parent. Work should be done with both parents, and the children if necessary. Reluctant custodian parents need to work through their doubts and fears, and officers need to bear in mind that their own assessment that access ought to be permitted might be wrong. Therefore they must be open-minded, and alert to the effects of access on the children. Unless the officer succeeds in enabling the parents to work together amicably over access during the period of the parental guidance order, access ought to stop, even if the fault is mainly on the part of the custodian parent, as access in turbulent circumstances has been shown to be damaging to children.[46]

The effects of these recommendations would be an increase in the number of orders made annually involving welfare officers, but, as orders would last for a much shorter period of time, the number in existence would be considerably reduced. At present, the number of matrimonial supervision orders made and deleted annually is small, but the number carried over from year to year is considerable. Fewer welfare reports would be required, as they would be prepared only in cases in which care and control, or the principle of access were in dispute. The preparation of welfare reports would be undertaken by parental guidance officers, and the officer who prepared the welfare report would be expected to operate the parental guidance order. When disputes about parenting were heard under guardianship proceedings, an officer who was in a position to operate the parental guiadanne order would be present in court. Thus the only occasion on which a parental guidance order might be made, when there was no parental guidance officer in court, would be when these orders were made because of concern about the arrangements for the children. Some procedure could be introduced to make certain that a member of the specialist team is

46. The effects of access on children are reviewed in Chapter 3.

notified promptly in these cases, so that work begins immediately orders are made.

E. SUMMARY

A major deficiency uncovered by this study is the absence of services to help separating parents come to terms with the past, and avoid disputes, particularly involving children, which were found to occur frequently when one party was unwilling to end the marriage. A structure of counselling and mediation services is recommended, including counselling facilities for teenage children.

Neither the courts nor society at large encourage the continued involvement of the non-custodian parent in the parenting of children after separation. It is recommended that no orders should be made for custody or access in uncontested cases, so that parental rights remain equally with both parties. Also judges might use Children Appointments to emphasise to both parents the need to continue to co-operate over the children's upbringing, and to discuss proposals for doing so. Following disputes over the children's upbringing, or who is to have care and control of the children, or the principle of access, it is recommended that parental guidance orders should be made, and should be operated by specialist officers trained to help both parents to work together over the children's upbringing, and to ensure that access is taking place in circumstances beneficial to the children. These orders should replace existing matrimonial supervision orders.

Welfare reports are sometimes prepared in uncontested cases, and almost invariably recommend the continuation of the status quo, and it

is recommended that this practice should cease. Welfare reports should only be prepared when there are disputes about who is to have care and control of the children, or about the principle of access.

Matrimonial supervision orders are sometimes ordered in circumstances unrelated to the separation or divorce, and which would not warrant supervision under other legislation. It is recommended that this practice should cease and that separated parents should be subjected to the same scrutiny as other parents with regard to their treatment of children. Parental guidance orders should be made to ensure that the arrangements for the children are adequate before the Certificate of Satisfaction is signed by the judge, and following all disputes about the children.

Disturbances in children were reported by separated parents in many cases, including all the children of 5 years old and younger who were in the custody of mothers living at social security level. It is recommended that an information service be provided to inform parents of their welfare rights, and to assist them with household management.

The majority of complaints made by the separated parents interviewed during this study might be alleviated by the above recommendations. In addition, the following recommendations are made: delays in court hearings over access disputes should be avoided; access centres for visiting parents should be provided; and provision should be made to enable the parent living with the children in the matrimonial home to move to cheaper accommodation without having to reimburse the former spouse with more than the difference in price of the two houses.

More information is required on the following: the underlying

causes of disputes among separated parents; the reasons why some non-custodian parents do not visit their children; the long-term psychological effects on children of various access practices; and the numbers of children who search out their "lost" parent in adult life.

Divorce should be possible with less suffering for the parties and the children. There must be very few parents who forfeit the right to remain in contact with their children by their behaviour. A number of parties might be helped to co-operate over the children, and allow access to take place in a happy atmosphere, without the risk of creating divided loyalties in the child. There may perhaps remain a hard core of embittered parents who are unable to make any contact with their ex-spouses without anger and recriminations, and in these cases, it is better for the children that no access should take place. This may be extremely painful for the absent parent, but surely this is preferable to damaging the child. And perhaps in time, when the children are older, they may take the initiative and re-establish contact.

c

APPENDICES

A. SEPARATED PARENTS: MARRIAGE PATTERNS (p 67)

1. Age of the Parties at Marriage

	21 Years and under	22-26 Years	27 Years and over
Women	7	12	8
Men	4	19	4
Total	11	31	12

Three of the 4 interviewees who were from either classes 4 or 5 were over 27 at the time of their marriages, and the remaining person from this class was 26. It was curious that in 10 of the 11 cases where one party was 21 or under at the time of the marriage, there were no disputes between the parties after the marriages ended, whereas there were disputes in 9 of the 12 cases where at least one party was 27 or over at the time of the marriage.

2. Length of the Marriages

5 Years or less	6-9 Years	10 Years and over
6	10	11

The partner interviewed reported that serious problems arose in the marriages in the first year in 8 cases including 3 which lasted over 10 years. The other marriages where serious problems were reported to exist in the first year lasted between 2 and 7 years. Disputes occurred after the separation in all but 2 of these cases, and behaviour problems in the children during or after the separation were reported in every case.

3. Violence

Among the couples in group A, where one party wanted the marriage to continue, violent outbursts were reported to have occurred before the separation in 13 of the 14 marriages. In 6 cases, the husband was violent with his wife; in 2 cases the wife was the violent party; and in 3 cases each party used violence on the other. One doubtful case has been included in which the husband reported that he had never been violent, but that his wife had left him for a battered wives' home. In 3 cases the violence reported was very considerable over a period of years, although in other cases, it was limited to one or two outbursts.

In group B, in which neither party wanted the marriage to continue, violent outbursts were reported to have occurred before the separation in 5 cases. In 2 cases, the man was violent with his wife; in 1 case the woman was violent with her husband; and in 1 case each party used violence on the other. One of these cases involved very considerable violence, and the woman had to be admitted to hospital on one occasion. One woman reported that her children were frightened of their father, who chastised them unduly. However, after the separation, one of the children in her care was removed under a Place of Safety Order and kept in care when that order came to an end.

There was no relationship between the age at the time of the marriage, the lengths of the marriages, and the occurrence of violent outbursts. Violence occurred among all the parties from social classes 4 and 5, and among 14 of the 23 parties from social classes 2 and 3.

B. SEPARATED PARENTS: DIVORCE DETAILS OF THE PARENTS (p 68)

There were 12 divorces among the couples in group A. One took place under the old law on the ground of adultery. The facts used in the remaining 11 divorces under the 1973 Matrimonial Causes Act were adultery in 2 cases, unreasonable behaviour in 4 cases, and the 2 year separation in 4 cases. One fact was not recorded.

There were 11 divorces in group B. Three were under the old law, on the ground of adultery. The facts used in the remaining 8 divorces under the 1973 Act were adultery in 3 cases, unreasonable behaviour in 1 case, desertion in 1 case, and 2 year separation in 3 cases. One divorce was pending, and the couple were proposing to ask for joint custody of the children.

C. SEPARATED PARENTS: DETAILS OF ACCESS (p 70)

1. Group A Parents' Access		Frequency	Place	Overnight
Custodian mother	1	Once a week	Outings	No
	2	Occasionally	Outings	"
	3	Once a week	NCP's** home	"
Custodian father	1	Once in 3 weeks	" "	Holidays
	2	Occasionally	" "	No
Non-custodian father	1	Once a week	Outings	"
	2	Occasionally	NCP's home	"
	3*	Once in 2 weeks	" "	Yes & holidays
	4	Half term & holidays	" "	" "

2. Group A Parents; No Access Taking Place		Earlier Access	Parent refused	Child refused	No Access period
Custodian mother	4	Occasional - few months	No	Yes	6 months
	5	7 years	Yes	No	over 5 yrs
Non-custodian father	3*	Occasional - few months	"	Yes	1 year
	5	Occasional - few weeks	"	Yes	6 months
	6	None	"	No	18 months
	7	Few weeks	"	Yes	over 5 yrs

* This father had no access to one child, but access to the other child who was in care.

** NCP = non-custodian parent; CP = custodian parent

3. Group B Parents' Access		Frequency	Place	Overnight
Custodian mother	1	Once in 3 weeks	NCP's home	Yes & holidays
	2	Each weekend	" "	Yes
	3	Twice a year	CP's home	No
	4	Occasional	NCP's home	Yes
	5	Once a week	" "	Occasional
	6**	5 times a week	" "	Yes & holidays
Custodian father	1**	Each weekday	" "	Occasional
	2	Alt. weekend	" "	Yes & holidays
	3	3 times a week	" "	" "
Non-custodian father	1	Alt. weekend	" "	Occasional & hols
	2	" "	" "	Yes & holidays
	3	Once a fortnight	" "	Holidays
	4	Once a week	" "	Yes

** Both parties interviewed

D. SEPARATED PARENTS: THE MATRIMONIAL HOME (p 72)

Among the couples in group A, in which one party wanted the marriage to continue, there were 2 disputes over the disposal of the matrimonial home. In one dispute, a very considerable sum of money was involved. The woman wanted to remain in the matrimonial home, while the man wanted to sell the property and rehouse his wife and child in more modest accommodation. The other disagreement occurred when the custodian father had to sell the home because it was too far from his place of work, and he was ordered to give his ex-wife her share of the property. This conflicted with a private agreement made earlier by the couple through their solicitors. This man was angry to think that couples could make what they thought were legally binding agreements, which could be disregarded by the court.

In group B, in which both parties wanted the marriage to end, dissatisfaction was expressed by 2 women regarding the disposal of the matrimonial home. One custodian mother who remained in the home with her child made this criticism:

> I feel satisfied with the agreement financially, but personally I would prefer to have a two-bedroomed bungalow. I don't like this house. I have lost interest in it completely. It has lots of bad memories. It is also very expensive to keep running. I am the one who keeps it running. If I sold the house before my son was 17, I don't know whether I would have to give my ex-husband his share then.

A non-custodian mother saw the matrimonial home as a way of ensuring that she would see the children:

> The house is in our joint names and he can't sell it without my signature. I can't sell it because it is a matrimonial

> home, but I have a half stake in it, and I will get my share eventually. He wants me to sign my half over to the children, and then he would have sole control of the house, and the children. He could sell the house and move anywhere in the country. The house binds him to this area unless he can afford to sell, and buy another property with his half of the money.

However this woman was ambivalent about the sale of the house, as she felt financially insecure, and considered that she ought to have got something from her ex-husband. Had he left her, she said, she would have sold the house, given him half of the proceeds, and bought a much smaller home which was easier to run.

The custodian parent moved out of the matrimonial home in 9 cases in group A, including 3 council houses. Six of the privately owned properties were sold, and the proceeds divided in all but 2 cases, where the non-custodian parent retained all the proceeds. One custodian mother who sold her house and divided the proceeds, had been told by her solicitor that she would be required to do this by the court. She was very angry later when she learned that the court might have allowed her to postpone the sale, and use the home for herself and the child.

In 2 cases in group B, the non-custodian parent remained in the matrimonial home, and the mother and children moved out. The mothers were provided with alternative accommodation in both cases; in one case by the parents, and in the other, by the future spouse.

E. SEPARATED PARENTS: MAINTENANCE (p 73)

Maintenance was ordered for 9 wives in group A. In 3 cases this was paid willingly. One man had left home after 6 years and felt very guilty. In the other two cases the women had left after 11 years, and they did not allow their ex-partners to see the children. However the men reported that they paid the maintenance to their wives willingly.

Six men in group A were reluctant to pay the maintenance to their ex-wives, but 2 marriages had been short - 5 years or less. After a marriage of 7 years, one man was reluctant to pay, and there was an access dispute in this case. The access dispute was not related to the maintenance dispute. Three of the marriages were long ones - 10 years or more. In 1 case, the ancillary matters had not been decided at the time of the interview, and there were disputes about access and the matrimonial home, as well as the woman's maintenance. One custodian father objected to paying maintenance to his ex-wife, although she had not worked during their long marriage. The disposal of the matrimonial home was also disputed in this case. Another non-custodian father withheld maintenance from his ex-wife as she was denying him access to the children. He was willing to pay maintenance provided he was given access.

In group A, maintenance was paid willingly to the children in 4 cases. Two non-custodian parents who were unwilling to pay were involved in access disputes, including one who was not getting any access. One man appeared to want a complete break with the past, and in one case, all matters were disputed, and had not yet been decided by the court.

Maintenance was ordered for 5 women in group B. It was paid willingly to 3 women, who had left their husbands after 8 years or longer.

However, these partings were amicable. Maintenance was paid reluctantly to 2 women after short marriages in both cases. In one case, the custody of a child was contested, while in the other case, the man did not know that his wife was pregnant at the time of the separation, and had been anxious to avoid such an occurrence, whereas his wife had wanted to become pregnant. The magistrates' court made a very small award to this woman, and she appealed. Her ex-husband fought the case, but the Appeal Court ordered a re-hearing in the magistrates' court before a different bench. A bigger award was made on the second hearing. Access was problematic in this case, as the woman did not want the child to form a relationship with the father.

Maintenance was paid unwillingly to only one child in group B, and this was the case in which the custody of the child was contested, and the man did not accept the custody decision of the court.

F. MAGISTRATES' COURT RECORDS: CARE AND CONTROL TO A THIRD PARTY (p 129)

1. The maternal grandmother was granted custody of the boy involved, and the mother was given "reasonable access".

2. Guardians were appointed for a child who had lost both parents, and a report was prepared.

3. Custody of a girl was granted to the father with care and control to the Aunt and Uncle. A report had been prepared and a matrimonial supervision order imposed.

4. Custody of a 2 year old boy was granted to the mother with care and control to the maternal grandmother, following a welfare report.

G. MAGISTRATES' COURT RECORDS: APPLICATIONS FOR A TRANSFER OF CUSTODY (p 130)

1. Mothers Applicants

Mothers were successful in getting a transfer of custody in six cases:

(i) The original order was made in 1971 and granted custody to the father of 2 boys, ages not recorded. No report was prepared when custody was transferred to the mother.

(ii) The original order was made in July 1976 and granted custody to the father of 2 children, a boy of 15 and a girl of 9, with Supervision orders added. The transfer of custody to the mother took place 4 months later.

(iii) The original order was lost but the variation granted custody to the mother of a girl, age unspecified. No report was prepared.

(iv) The original order was made in 1973 and granted custody to the mother. There were 3 children, 2 boys of 9 and 1, and a girl of 10. This order was varied in 1975 and custody was transferred to the father. In December 1976, the mother succeeded in getting custody of 2 of the children, the boy aged 12 at this time, and the girl of 13. The youngest boy aged 4 remained with his father.

(v) The original order was made in 1975 and granted custody of 3 girls to the mother and custody of the fourth girl to the father, with Supervision orders added. The 1976 variation gave custody of the fourth girl to the mother. The child was living with the mother at the time of the hearing and a report was prepared.

(vi) The original order was made in 1969 and granted custody to the mother of 3 children, a boy of 5 and girls of 9 and 6. In 1975 this order was varied to give custody to the father of the girl, who was 15 by then. The 1976 variation reversed this custody decision on the ground that the father was not a fit and proper

person to have custody of his daughter.

The mother failed to have custody transferred to her in 3 cases. In each case, Supervision orders were added to the original orders:

(i) The original order was made in 1973 and granted custody to the mother of 3 children, 2 boys and 1 girl. This order was varied in 1975 to give custody to the father. At the time of the custody transfer, the boys were 12 and 4, and the girl was 13.

(ii) The original order was made in 1975 and granted custody to the father of 1 girl whose age was not recorded.

(iii) The original order was made in 1975 and granted custody to the father of 2 children.

2. Fathers Applicants

(i) The original order was made in 1971 and granted custody to the mother of 6 children, 2 boys and 4 girls whose ages ranged from 15 to 7. The following year, the second oldest girl, who was 15 by then, moved to the custody of the father. The 1976 variation, made without a report, transferred the custody of another girl of 14 to her father.

(ii) The original order was made in 1973 and granted custody to the mother of 5 children, 4 boys and 1 girl, varying in age from 16 to 11. The 1976 variation, made without a report, granted custody to the father of the youngest boy, who was 12 by then.

(iii) The original order was made in February 1976 and granted custody to the mother of 4 children, 3 boys and 1 girl, varying in age from 11 to 5. The variation took place in October 1976 without a welfare report, when the custody of the oldest boy aged 12, was

transferred to his father.

(iv) The original order was made in 1974 and granted custody to the mother of 4 children, 3 boys and 1 girl. The variation which transferred custody to the father, was made without a report. At the time, the boys were 11, 9 and 6, and the girl was 8.

(v) The original order was made in 1975 and granted custody to the mother of 4 children, 3 boys and 1 girl whose ages were not stated. Supervision orders were added at the variation.

(vi) The original order was made in 1975 and granted custody to the mother of 2 children. The boy was 16 and the girl was 14 when custody was transferred to the father.

3. Grandparents Applicant

(i) The original order was made in 1973 and gave custody to the mother of 1 girl, age unspecified. Eight months later, this order was varied, transferring custody to the father. The 1976 variation gave care and control to the paternal grandparents, and there was no report.

(ii) The original order was made in 1975 and gave custody to the mother of 2 girls ages 2 and 3. Supervision orders were added at the 1976 variation made 8 months later, which gave care and control to the paternal grandparents.

H. MAGISTRATES' COURT RECORDS: ACCESS SPECIFIED IN ORIGINAL ORDERS (p 131)

1. The Father's Access

(i) Access to a child all day once a week was ordered, following a welfare report.

(ii) Access to 2 children in the mother's house, on 1 day each week was ordered, after a welfare report had been prepared. The children were a boy of 8 and a girl of 5. A report was prepared.

(iii) No report was prepared and access was ordered for half a day each week to 2 boys aged 13 and 6.

(iv - vi) Access was ordered for half a day each week, and there was 1 child involved in each case. A report had been prepared in 1 case only.

(vii) Staying access was ordered during alternate weekends. No report was prepared and the number of children was not recorded.

(viii) Staying access for 2 out of 6 weekends was ordered after a report had been prepared. There were 5 children involved, boys of 8, 5, and twins of 1, and a girl of 3.

2. The Mother's Access

(i) Daily access was ordered to a child of 2 years following a report.

(ii) Access was ordered all day once a fortnight, and also 1 evening each week following a welfare report. The children involved were boys of 13, 12 and 7.

(iii) Access all day once a week, plus staying access for 1 day over Christmas was ordered, but no report was prepared. There was 1 boy involved but his age was not recorded.

(iv) Access was defined for holidays. Staying access was ordered for half the school holidays and every other Christmas. There was no report prepared and the age of the girl involved was not specified.

I. MAGISTRATES' COURT RECORDS: ACCESS SPECIFIED IN VARIATION ORDERS (p 132)

1. The Father's Access

(i) Access was at least once a week in the presence of the stepfather. A report was prepared. The child concerned was the youngest child of the family, a daughter of 9. The original order, made in 1973, granted custody to the mother of 5 children, 4 boys and 1 girl. This order was varied 9 months before the access variation was made, when the custody of one child, the youngest boy, was transferred to the father.

(ii) Access was ordered all day once a week, to 2 girls, aged 11 and 6, and no report had been prepared. The original matrimonial order was made in 1971 and granted custody to the mother of 3 children, 1 boy and 2 girls. At the time, access to the boy, aged 2, was defined for all day once each week, and the same access was defined for the girls at the 1976 variation.

(iii) Access was ordered all day once a week, to 2 girls aged 8 and 4, and no report had been prepared. The original order was made in 1974.

(iv) Access was ordered all day once a week to a girl aged 4, following a report. The original order was made in 1974.

(v) Access was ordered all day once a week to 2 children, a boy of 6 and a girl of 7, following a welfare report. The original order was made one year earlier.

(vi) Access was ordered all day once a week, to a girl of 5, following a report. The original Guardianship order was made in 1972 and gave custody to the mother of a girl of 1 and custody to the father of a girl aged 3.

(vii) Access was ordered all day once a week to 2 girls aged 7 and 3, following a welfare report. The original order was made in 1973.

(viii) Access was ordered all day once a week with staying access one weekend in 6, one day over Christmas, and one day over a Bank Holiday. The child concerned was a boy whose age was not given. The mother resisted the access variation order, and a report was prepared. The original order was made in 1971.

(ix) Access was ordered all day once a week with staying access once a month, and 2 weeks in the Summer to a girl of 8. The original order was made in 1968.

(x) Access was ordered all day once a week with staying access once a month, following a welfare report. The children concerned were girls of 15 and 13. The original order was made in 1964 and granted custody to the mother of 4 children, boys of 6 and 5, and girls of 3 and 1.

(xi) Access was ordered for an afternoon a week to 2 girls aged 7 and 3. No report had been prepared, but the mother had consented to the order. The original order was made 6 months before.

(xii) Access was ordered one afternoon a week to 2 children, whose ages and genders were not given, following a welfare report. The original order was made in 1971.

(xiii) Access was ordered all day once a fortnight to a girl of 5, following a welfare report. The original Matrimonial order was made one year before when custody was granted to the mother of a boy of 16 and girls of 15 and 14.

(xiv) Access was ordered all day once a fortnight or staying access for 4 weeks a year, to a boy of 5. The mother opposed the order, and a report had been prepared. The original Guardianship order was made in 1972.

(xv) Access was ordered all day once a fortnight and staying access for 1 week at the Spring Bank Holiday, 2 weeks in the Summer, and alternate Easter and Christmas. The child concerned was a girl of

8, and a report had been prepared. The original order was made in 1971.

(xvi) Access was ordered for an afternoon once a fortnight, to 2 children, a boy of 7 and a girl of 8, following a welfare report. The original order was made in 1973.

(xvii) Access was ordered one afternoon a fortnight to 2 children, boys of 6 and 4, following a welfare report. The date of the original order was not found

(xviii) Access was ordered for one weekend a month, and for 3 public holidays following a welfare report. The children concerned were a boy of 3 and girl of 5. The original order was made in 1974.

(xix) Access was ordered all day one weekend a month, to a girl of 6, following a welfare report. The original order was made 6 months before.

(xx) Access was ordered for 2 hours once a month in the mother's house, to a girl of 12, following a welfare report. The original order was made in 1973 and gave custody to the mother of 3 children, a boy of 17 and girls of 16 and 9.

2. The Mother's Access

(i) Access was ordered for 2 hours once a fortnight, following a welfare report. There were no details of the child/ren concerned, and the original order was made in 1974.

(ii) Access of one weekend staying access per month and 1 week at both Christmas and Easter, plus 3 days during the mid-term holidays was ordered, but no welfare report had been prepared. There were 2 boys concerned, whose ages were not stated. The original order was made in 1971 and granted custody to the mother. This order was varied in

1974 when custody was transferred to the father.

(iii) Access was ordered for 6 weekends per annum, plus 1 week at Christmas and half the school holidays, following a welfare report. The child concerned was a boy whose age was not stated, and the original order was made in 1968.

J. MAGISTRATES' COURT RECORDS: ACCESS DELETED AT VARIATION (p 134)

1. The mother's application was on the ground that the father's visits were detrimental to the welfare of the child. There was no evidence of a report having been prepared in this case, but the original order had been made only 6 months before the variation order, and possibly a report had been prepared for that hearing.

2. The original order was made in 1971 and custody of the boy of 8 months was given to the mother. The order was varied in 1974, but no details were available. Presumably access was defined at this time. When access was deleted, a report was prepared, but this report was not available.

3. The mother's application to re-define access was on the ground that the father had disobeyed the terms of the access order. At the same time, the father applied to have the terms of the access order enforced. His application was dismissed. A report was prepared before the father's access was deleted but was also not available.

4. The mother's application was to delete access to 3 children, a boy of 9 and girls of 11 and 4. The father's application to define access failed, and a report was prepared, but this report was also not available.

K. MAGISTRATES' COURT RECORDS: MATRIMONIAL SUPERVISION ORDERS ADDED AT VARIATION (p 141)

1. The mother's application for a transfer of custody failed and a supervision order was added on the child involved. The original order had been made 1 year earlier and an access condition written into the order stating that reasonable access was to be conditional upon the social worker being present. There were frequent court applications by the mother on the ground of the failure of the father to comply with the access order.

2. The mother's application for a transfer of custody failed, and supervision orders were added on 3 children, boys of 12 and 4 and a girl of 15. The original order was made in 1973 and granted custody to the mother. This order was varied in 1975 and custody was transferred to the father. The supervision orders were added at the 1976 variation when the father retained custody of the children.

3. The mother's application for a transfer of custody failed, and supervision orders were added on 2 children whose ages and genders were not stated. The original order was made in 1975 when the father was granted custody and the mother's access was defined.

4. The father's application to have custody of 4 children transferred from the mother succeeded, and supervision orders were added. There were 3 boys and 1 girl involved. The original order was made 9 months before, but could not be traced.

L. MATRIMONIAL SUPERVISION ORDERS: CHANGES IN ACTUAL CUSTODY DURING THE PERIOD OF SUPERVISION (p 273)

1. A boy of 10 returned to live with his mother and three siblings 2 years after the initial order was made. No legal transfer of custody appears to have taken place. The children of the family are still divided as father still has one other child living with him.

2. A boy of 10 returned to live with his mother and 2 sisters when his father's co-habitee objected to having him around. The mother has obtained legal custody of the boy and the family is now united.

3. A mother obtained legal custody of a girl of 12 years, one year after the initial custody order was made, but failed to get custody of the other 4 children of the family, so the children are now divided between the two parents.

4. The custodian father died, and the supervising social worker arranged for the children to live with the mother.

5. The custodian father put the children into care when his co-habitee left him, and the arrangements for looking after the children broke down. The supervising social worker arranged for the children to live with the mother, and is encouraging her to apply to the court for transfer of custody.

6. A girl moved back with her mother when her father blamed her for his marital problems with his second wife. The mother and stepfather adopted the child.

7. Legal custody was transferred from the mother to the father one year after the initial order was made. The case had not been allocated to a supervising officer by the time the court hearing took place.

8. The father "snatched" his 5 year old boy from the custody of the mother, who, he claimed, was neglecting him. The mother did not object, nor did she ever visit the child. No legal change of custody has been made. Supervision of the child had broken down at the time the father took the child.

9. Two children of 2 and 3 were moved back to their mother within a short time of the order being made giving custody to the father. The children rejected the parenting of the father's new partner. The mother had difficulty coping with the children, and she returned them to their father again about 4 years later. The father then sent them to their grandmother, who looked after them for a few months before returning them to their father. At present the children are living with their father and stepmother. The order has been in existence for 5 years. When the supervising officer left the area there was a gap of over 2 years during which the family was not supervised, and during which the children moved to their father and then to their grandmother.

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