UNDERSTANDING CHILD CONTACT CASES IN SCOTTISH SHERIFF COURTS

Karen Laing
Graeme Wilson

Newcastle University

Scottish Government Social Research
2010
This report is available on the Scottish Government Social Research website only www.scotland.gov.uk/socialresearch.

The views expressed in this report are those of the researcher and do not necessarily represent those of the Scottish Government or Scottish Ministers.

© Crown Copyright 2010
Limited extracts from the text may be produced provided the source is acknowledged. For more extensive reproduction, please contact the Queens Printers of Scotland, Admail, ADM 4058, Edinburgh EH1 1NG. Email: licensing@oqps.gov.uk
# TABLE OF CONTENTS

**EXECUTIVE SUMMARY** 1

- Background 1
- Aims and objectives 1
- Research methods 1
- Main findings 1
- Conclusions 3

1 **MAKING ARRANGEMENTS FOR CONTACT** 4

- The policy context in Scotland 5
- Parenting after separation 8
- Using the courts to make contact arrangements 11
- Involving children in making contact arrangements 12
- Involving children in legal proceedings 13
- Contact actions in Scotland 13
- Summary 14
- The structure of this report 15

2 **RESEARCHING CHILD CONTACT CASES IN SHERIFF COURTS** 17

- Our approach to the study 17
- Quantitative research methods 17
- Qualitative research methods 21
- Caveats of the research 24
- Summary 25

3 **STARTING COURT ACTION** 26

- Background to child contact cases 26
- Expectations of court action 37
- Summary 41

4 **CHILD WELFARE HEARINGS IN ACTION** 43

- Perceptions of court staff 43
- Sheriffs’ interaction with parties 47
- How parties have their say 48
- CWHs as a process not an event 52
- Summary 54

5 **REDUCING CONFLICT AND REACHING AGREEMENT** 55

- Ending a contact action 55
- Dealing with antagonistic approaches 56
- Reaching agreement and avoiding orders 57
- The use of support services during the court action 59
- Summary 61

6 **THE IMPACT OF COURT ACTION** 62

- Contact arrangements after court action 62
- The length of court action 63
- Outcomes of court action 65
- Communication after court action 67
List of Figures

FIGURE 3.1 Issues cited in court cases with contact as primary crave
FIGURE 3.2 Perceived quality of communication between pursuers and children at the beginning of court action for contact or divorce
FIGURE 3.3 Outcomes pursuers desired from contact cases
FIGURE 4.1 Number of CWHs per case
FIGURE 6.1 Outcomes for pursuers
FIGURE 6.2 Pursuers’ satisfaction with court action
FIGURE 7.1 Pursuers’ perceptions of whether children’s best interests were taken into account during court action

List of Tables

TABLE 2.1 Primary crave of cases involving contact
TABLE 2.2 Employment status of contact pursuers
TABLE 3.1 Levels of contact with children
TABLE 3.2 Perceived quality of communication between parents
TABLE 3.3 Signs of stress shown by pursuers (GHQ scores)
TABLE 5.1 Status of cases after 18 months
TABLE 6.1 Duration of dismissed and sisted court actions
ACKNOWLEDGEMENTS

The authors would like to thank all those that made this research possible. We are indebted to the Scottish Government Justice Directorate, the Scottish Court Service, and the Scottish Legal Aid Board for enabling the research to take place. We are also grateful for the advice and challenge provided by the Research Advisory Group. We would not have been able to conduct this research if it had not been for the enthusiasm and commitment of the Sheriff Courts, and some 400 law firms that use them. We are sincerely grateful for all those who supported the research.

Thanks also are due to Professor Janet Walker who acted as expert consultant to the study and was able to share her extensive expertise in the area, Janette Pounder and Jane Tilbrook, who provided us with valuable secretarial support, and Michael Ayton, who edited earlier drafts of the report. Thanks go, also, to David and Jane Bradley for their involvement in the planning and execution of this research.

Last, but by no means least, we would like to thank all those people who lodged a contact case in court, and agreed to participate in our research. Without their willingness to be open about their experiences, we would not have been able to produce this report.
GLOSSARY

Definitions are provided below of some of the legal terms and acronyms used in the report. These definitions draw on the ‘Glossary Of The More Common Scottish Legal Terms’ provided on the website of the Scottish Courts at: http://www.scotcourts.gov.uk/library/publications/docs/glossary.pdf

Absolvitor
In a civil action, the judgment pronounced when a court finds for the party defending the action.

Action
Proceedings instituted by a person in a civil court.

Contact
Communication between, or time spent together by, a child and parent who live apart from each other; replaces the former term 'access'.

Contact order
A formal order by a court in relation to how the child of a relationship is able to communicate or spend time with a non-resident parent or grandparent.

Crave
An outcome sought by any party in an action, specified in the initial writ or defences.

Curator ad litem
A person either entitled by law or appointed by the court or an individual to administer the estate of another, for the purposes of a specific action only.

CMS
Case Management System (Scottish Court Service).

CWH
Child Welfare Hearing, hearing with distinct procedural rules in an ordinary cause action in respect of one or more children; the hearing is held in closed court and is intended to establish how the general welfare of named children can best be maintained.

Defences
The statement by way of defence lodged at court by the defender.

Defender
The party against whom a civil action is brought, who disputes the claim of the pursuer and lodges defences.

Ex proprio motu
On the court's or judge's own initiative.

F9 form
A form sent during a case to a child who is the subject of a court action regarding contact to inform them and invite their views.

Initial writ
The document by which ordinary civil proceedings in the sheriff court are normally initiated. This is booked by the
pursuer at the sheriff clerk’s office.

Interim
As applied to the ruling of a court, temporary or partial.

Interlocutor
An order of court made during the course of an action.

Joint minute
An application to court signed by both agents and possibly by the parties they represent.

Motion
An application made in court for some subsidiary purpose during the course of an action.

Options hearing
Hearing during an action at which the sheriff will identify outstanding issues and consider the options for their resolution.

Ordinary cause action
Relatively formal action initiated by writ in the sheriff court.

Proof hearing
Hearing at which a sheriff determines a case after hearing evidence.

PRR
Parental responsibilities and rights.

Pursuer
The person bringing a civil action to court.

Residence
Status as parent or guardian with whom a child lives; replaces the former term ‘custody’.

Residence order
A formal order by a court in relation to whom the child of a relationship should be with.

SCS
Scottish Court Service.

Sheriff
A qualified person who sits in judgement in the sheriff court in Scotland.

Sist
To stay or stop process in an action.

SLAB
Scottish Legal Aid Board.

UNCRC
EXECUTIVE SUMMARY

Background

1. The Scottish court system for dealing with child contact disputes aims to place children at the centre of decisions that affect them and encourages agreed solutions that support children’s general welfare. In 2006, researchers at Newcastle University were commissioned by the Scottish Government to conduct a study investigating the nature and impact of sheriff court actions in Scotland in respect of contact with children.

Aims and objectives

2. This study aimed to increase understanding of the Scottish court procedure for dealing with child contact cases, examining how it is perceived by legal professionals and how it meets the expectations of those who initiate court action. The objectives were to examine:

- the number and type of contested contact cases in Scottish sheriff courts
- the characteristics of parents and children involved in contact disputes being resolved through court action
- the processes involved in court action in respect of child contact
- pursuers’ reasons for undertaking court action, their previous attempts at resolution, their use of support services and the outcomes they desired
- the role of child welfare hearings (CWHs) in relation to other court action
- whether the views of children and young people are considered by courts and parents, and if so in what way

Research methods

3. We adopted a mixed-methods approach which included: analysis of court data on cases involving a crave for contact; a postal survey, at two points in time, of individuals undertaking contact actions and/or divorce actions involving children; a survey of family solicitors; in-depth telephone interviews, in two waves, with a sample of pursuers in contact actions; observations of CWHs; and face-to-face interviews with sheriffs and sheriff clerks.

Main findings

4. The main findings from the study can be summarised as follows:

1. 901 primary craves brought before Sheriff courts in three Sheriffdoms over a fourteen month period were about contact. Pursuers of contact craves were predominantly non-resident and predominantly fathers.

2. Seventy per cent of pursuers with contact issues had had some level of recent contact with their child or children at the start of the action. Pursuers reported difficulties in communication between parents, and primarily sought increased contact or a better arrangement regarding contact with the children involved. Seventeen per cent of pursuers,
however, did not anticipate that they would achieve a successful outcome to their court action.

3. More than half of pursuers reported that they experienced moderate or severe stress as they undertook the contact action. This stress was most severe for those whose communication with the other party was the poorest. Those pursuing contact reported significantly poorer communication with the other parent than those pursuing divorce, and higher levels of stress arising from their contact problems.

4. Pursuers often described court action as a fight. They expressed a wish to see justice done, or to achieve parity between the parents in the allocation of contact, or to demonstrate that they had done the right thing in going to court. Few pursuers had sought help or advice from services other than their solicitor.

5. Sheriffs and sheriff clerks endorsed CWHs as a mechanism which enabled sheriffs to address parties directly and hear their voices, and which allowed incremental change towards resolution. Most pursuers (81%) felt prepared for attending a CWH, but 70 per cent were nervous during the hearings. Some said that they did not feel party to agreements announced by solicitors in court. Pursuers reported a strong positive impact where the sheriff had spoken directly to them to explain their view, even if they disagreed with that view.

6. Half of pursuers did not speak during their CWH. This was because they did not wish to, because they felt they should not do so, or because their solicitor had instructed them not to. Fifty-seven per cent of the pursuers we surveyed who had spoken during their hearing felt that their views had been taken into account. In interviews, pursuers were extremely positive about having spoken in court.

7. Sheriffs discourage confrontation in court, emphasising shared outlooks, common goals, and a focus on children’s general welfare. Nevertheless, some pursuers continue to take an antagonistic approach to their case, particularly if allegations have been made of violence, abusive behaviour or mental health problems.

8. Almost all actions in respect of contact are dismissed or sisted without reaching a proof hearing, consistent with a non-adversarial approach and the principle of minimum intervention. Sheriffs and solicitors seek to promote conciliatory approaches and reach a compromise between parties. Pursuers in contact cases may see their involvement with their solicitor as a process of bargaining over contact.

9. Sheriffs can refer parties in contact cases to mediation, and they strongly endorse the use of contact centres, particularly where they have concerns about one party’s parenting skills or capacity. Pursuers using contact centres appreciated being able to see their children, but were anxious to be allowed unsupervised contact. Some pursuers regarded court-directed mediation as having been beneficial, but others did not.

10. During the court case the amount of contact generally increased for pursuers, and this increase was maintained. Most pursuers were satisfied with the results of the case, and levels of stress reduced significantly afterwards. Pursuers who maintained contact following the
court case said their children were happier. Some parents realised that their original plans for contact had been impractical.

11. Pursuers were dissatisfied with the apparent unpredictability, cost, and delay to resolution of an open-ended sequence of CWHs. Some fathers resented what they viewed as an assumption that their parenting needed to be monitored.

12. The quality of communication between pursuer and defender had often improved following the court case, but some pursuers still expressed continued ill feelings towards defenders. Those pursuers whose cases were resolved with a court order felt more confident of lasting change than those who had reached an agreement without an order. Many pursuers were prepared to return to court if contact problems re-emerged.

13. Fifty-four per cent of actions were still continuing after four or more months, and pursuers were anxious about how long they might run. Many pursuers felt that cases that had been resolved had taken too long to resolve, but saw this as inevitable or unavoidable.

14. Few pursuers had told children about the court action, since they felt they were too young, or did not want to burden them, or thought the child had been told by someone else. Some parents were worried that they could be accused of pressuring their child(ren) if they discussed the court action with them.

15. A number of the mechanisms available to court staff in order to ascertain children’s views are not widely used. The most commonly used are court-ordered reports and the F9 form. Few children in contact actions are represented by a solicitor or talk to a sheriff in person. Some pursuers were concerned that reporters’ visits to observe home environments were too short to establish the child’s best interests fully.

Conclusions

5. The Scottish sheriff court system deals mainly with disputes over ongoing contact. Court action has the effect of increasing overall rates of contact. Most pursuers are satisfied with the outcomes and see them as sustainable, and experience a positive impact for themselves and their children.

6. Taking court action as a parent or grandparent in respect of contact with a child is an extraordinarily stressful undertaking. Those who do so see no other option, but often anticipate a conflict without being sure of achieving anything. We have observed in Scottish sheriff courts, and in the accounts of pursuers, court staff and solicitors, a system which maintains a focus on children’s welfare in such disputes and which seeks to reassure families. In some instances the court process may become lengthy, and there may be more scope for the active inclusion of parties and children. It is, however, broadly endorsed as helping to resolve contact disputes to children’s benefit, and as bringing about meaningful change in the lives of separated families.
1 MAKING ARRANGEMENTS FOR CONTACT

1.1 In 2006, researchers at Newcastle University were commissioned by the Scottish Government to conduct a study investigating the nature and impact of court actions in Scotland in respect of contact with children. The study was carried out between 2007 and 2009, and this report details the background, methodology, findings and conclusions of that research.

1.2 All the research evidence points to the importance of children being able to develop and sustain a loving, stable relationship with both parents when their parents do not live together. Achieving this can be challenging for parents, particularly when their own couple relationship has broken down. The vast majority of parents are concerned to do the best for their children in these circumstances, but some, nevertheless, find it difficult to agree on arrangements for contact. If parents are unable to reach consensual agreements they may have to turn to the sheriff courts to resolve their disputes. Current Scottish legislation is aimed at putting children at the centre of decisions that affect them. Parents are encouraged to find acceptable solutions between themselves that support the welfare of their children, and to respect their children’s views. This system has been in operation for some years and it is timely to conduct research that considers the ways in which courts in Scotland deal with contact disputes.

1.3 This study aimed to increase understanding of the Scottish sheriff court procedure for dealing with child contact cases, examining how it is perceived by legal professionals and how it meets the expectations of those who initiate court action. Little research had previously been conducted that examined child contact in sheriff courts, and a wide-ranging set of objectives was needed to address the gaps in knowledge that existed. The objectives were to examine:

- the number and type of contested contact cases in Scottish sheriff courts
- the characteristics of parents and children involved in contact disputes being resolved through court action
- the processes involved in court action in respect of child contact
- pursuers’ reasons for undertaking court action, their previous attempts at resolution, their use of support services and the outcomes they desired
- the role of child welfare hearings (CWHs) in relation to other court action
- whether the views of children and young people are considered by courts and parents, and if so in what way

Two early objectives were to explore variations in process for legally aided clients and to describe the costs of court action. Studying variations in process for legally aided clients proved difficult, as pursuers often expressed uncertainty as to their entitlement to legal aid, or were reluctant to divulge this information. Some exploratory work about costs was undertaken but is not reported here.
1.4 In this first chapter we outline:

- the relevant Scottish policy context
- existing research evidence relating to contact and parental conflict
- the use of courts to make arrangements for contact
- how children are involved in contact disputes
- key aspects of contact actions in Scotland
- key issues arising from this review

The first step in this exploration was to conduct a literature review which would serve as a backdrop to our examining the kinds of issues we sought to address in our research.

The policy context in Scotland

1.5 In order to understand the context in which child contact actions take place in Scotland, it is necessary to know how the current system for dealing with them has arisen. In this section we describe the current legislative and policy framework within which child contact actions take place.

1.6 The international trend over the last few decades towards increased rates of parental separation, divorce and single living is reflected in the profile of family life in Scotland, where the percentage of children living in one-parent households rose from 19 to 25 per cent between 1991 and 2001 (Morrison et al. 2004). During that time, legislation focused on ensuring parental responsibilities rather than entitlements. The Children (Scotland) Act 1995 stipulates the rights of parents to have a child live with them; to control, direct or guide their upbringing; to maintain ‘personal relations and direct contact’ with them if living apart; and to act as their legal representative. Section 1 of the 1995 Act makes anyone with parental rights in relation to a child responsible for safeguarding that child’s health, development and welfare; providing them with age-appropriate direction and guidance; maintaining regular direct contact and personal relations if they do not live together; and acting as the child’s legal representative. However, parental rights exist only ‘to enable him [the parent] to fulfil his parental responsibilities in relation to his child’ (s.2(1)); and the responsibilities are responsibilities only to the extent that compliance is practicable and in the child’s interests (s.1(1)). Unlike the rights of ‘guardianship, custody, and access’ unmediated by their children’s rights that were afforded to parents under the Law Reform (Parent and Child) (Scotland) Act 1986 (Norrie 1995), the rights and responsibilities of parents in Scotland are now subject to the paramountcy of the welfare of their children. An individual with parental rights who does not live with a child, for instance, has a responsibility to maintain their relationship with that child and a right to see them in order to do this, but only where this is practical and in the child’s interests. The central principles of the Act in respect of court intervention relating to contact are that the court:

(a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers
that it would be better for the child that the order be made than that none should be made at all; and
(b) taking account of the child’s age and maturity, shall so far as practicable –
(i) give him an opportunity to indicate whether he wishes to express his views;
(ii) if he does so wish, give him an opportunity to express them; and
(iii) have regard to such views as he may express. (s.11(7))

In other words, the welfare of the child should be the primary consideration in decisions taken about that child, and children must have the opportunity to express their views to the court and have them considered. (Sutherland 2008).

1.7 Child Welfare Hearings (CWHs) were introduced in fulfilment of the Children (Scotland) Act 1995 as a mechanism for dealing with any actions with implications for the welfare of a child or children. They were intended to resolve such disputes more quickly if this was consistent with children’s welfare, and to avoid where possible the adversarial route of going to a proof hearing in these actions (Sutherland 2008). Unlike hearings in actions to resolve contact problems prior to the 1995 Act, CWHs are conducted in a closed court; parties, including any children wishing to attend, are required to be present at court unless they can show cause why this is not possible; and sheriffs have more extensive options for intervening. The CWH is intended to provide a focus on issues for any children involved in a case and as such may include discussion of how to access a child’s views; this must be determined where a child has expressed a desire for their views to be heard. A sheriff may request to speak with the child individually in their chambers; they may order a report of designated scope from a reporter suggested or nominated during the hearing; or they may appoint a curator to represent a child in the action. If a contact crave is not controversial, the dispute may be settled at the CWH. Sheriffs in CWHs have a range of options at their disposal, including referral to mediation or other services, making an order in respect of contact or residence, making no order, and the setting of a further CWH or a proof. We discuss the characteristics of CWHs in more detail in chapter 4, and mechanisms for accessing the views of children in more detail in chapter 7. Courts are encouraged to make an order only in cases where it would be detrimental to a child’s welfare for them not to do so, and they are increasingly applying Art. 9 of the UN Convention on the Rights of the Child (UNCRC) in order to recognise the right of the child to have continuing contact with both parents (Sutherland 2008).1

1.8 The principle of ‘minimum intervention’ suggests that parents should ideally make private arrangements between themselves for children to stay in contact with both of them following separation or divorce. During court action, sheriffs will only make an order if they see it as absolutely necessary to do so, and will seek to encourage negotiation and shared agreement between parties during

---

1 The UN Convention on the Rights of the Child, adopted by the UN in November 1989, spells out the basic common rights accorded to children everywhere. It has since been ratified by all member states except those of the USA and Somalia.
a court case. Furthermore, section 24 (7D) of the Family Law (Scotland) Act 2006 amended the 1995 Act to the effect that, when deliberating whether to make an order that would require the co-operation of two or more relevant persons, the court ‘should consider whether it would be appropriate to make an order’ (Sutherland 2008).

1.9 Most separated families in Scotland agree contact arrangements between themselves. When parents live apart, they or other family members may initiate a court action relating to contact at any time while a child is growing up. Yet the number of court actions is relatively small. For example, during 2002, 1,138 ordinary causes concerning residence and/or contact disputes were initiated in Scottish courts (Scottish Executive Justice Department 2004) and a survey of contact arrangements in Scotland conducted in 2007 indicated that fewer than 3 per cent of separated families had used the courts to negotiate contact or residence arrangements (MRUK 2007). A more recent panel study of pre-school age children growing up in Scotland found that among households where one biological parent was not resident, only 5 per cent of resident parents stated they had been to court regarding contact (Marryat et al. 2009).

1.10 While most separated families do not resort to court actions over contact, the 2006 Act extended automatic parental rights and responsibilities to unmarried fathers registered at the birth of any child from May 2006. At that time, fathers were known to be more likely to be non-resident than mothers (Morrison et al. 2004) and to initiate court action in respect of contact. In the vast majority (87%) of court actions in 2004 relating to child contact, the pursuer (the party who initiates the action) was a non-resident father (McGuckin and McGuckin 2004). The 2006 Act was expected to increase the number of men in Scotland with a legally defined paternal role towards children they did not live with (Dey and Wasoff 2006) but it was not clear at the time how this might affect rates of contact actions. Sutherland (2008, p427) notes that while the need for contact orders might be expected to diminish, the incidence of contact disputes and the desire to regulate them may prevail.

1.11 There may be a number of reasons why court action is not taken. In her study of parents in Scotland who had negotiated private separation agreements, Wasoff (2005) pointed to parents’ desire to avoid the costs associated with going to court, and to their perceptions that court actions were likely to drag things out and be detrimental to their children or themselves. It is, therefore, likely that cases going to court represent the most embittered or entrenched parental disputes. Studies of parents undertaking court action in other jurisdictions in respect of contact have reported high levels of distress, domestic violence and mental health needs (McIntosh 2003). Trinder et al. (2008), for instance, report that among a sample of 155 resident and non-resident parents in England and Wales at the start of a court action over contact, the mean score was considerably higher than the community norm. In another study, Bream and Buchanan (2003) found that one parent expressed fear of the other in 78 per cent of families, while there had been physical violence between parents in 55 per cent of cases. In Scotland too, poor relationships between parents are widely reported by resident parents
using the courts to resolve contact disputes. Marryat et al. (2009) state that among resident parents reporting a very bad relationship between themselves and the non-resident parent, 24 per cent had been to court over contact, compared with 1 per cent of those reporting a very good relationship. Given these findings, there is a need to examine more closely the motivations of pursuers to go to court. Exploring how they see their situation, and the challenges they face in resolving contact issues, is an important focus for research.

**Parenting after separation**

1.12 When parents go to court over contact with their children, each of them will have their own expectations about their own and the other’s parenting role. These expectations have to be balanced with the responsibilities that the courts expect parents to exercise in order to promote their children’s welfare. It is, therefore, important to recognise the key features of parenting after separation and how they may influence parties’ experiences of court action. While the co-parental role envisaged in policy requires that both separated parents engage in family life in such a way as to support their child’s general welfare, there is little elaboration of what that role might involve (Laing 2006; Wilson 2008). The prescription of co-operation in the 1995 Act, for instance, does not differentiate between the resident and the non-resident parent. Children simply spending more time with a non-resident parent, or seeing them more frequently, does not necessarily guarantee better outcomes for those children (Maccoby et al. 1993; Amato and Gilbreth 1999; Spruijt et al. 2004; Flouri 2006), or might have different effects depending on the child’s age (Hawkins et al. 2007; Jackson et al. 2009).

**Parental decisions about contact**

1.13 Parents face a plethora of decisions in relation to how they put contact into practice after separation, contention around which may lie at the heart of disputes that are taken to court. They may find themselves caught up in moral dilemmas, in that they must choose between options, all of which may have something to commend them, on the basis of what they each judge to be right or wrong for their child (Finch 1989). The different choices that parents make when separating are shaped by the opportunities, constraints and responsibilities arising from the paths each has taken during their lifetime (Smart and Neale 1997; Elder 1998). In this sense, people are active in determining their own behaviour, but the reasoning behind any choice they make can be influenced by the support and the alternatives they have available to them, their experiences of making decisions, and their understanding of themselves and others. How parents think of themselves and of their identity as mothers or fathers after separation will also impact on the choices they make when trying to adapt their parenting to aspects of their daily life such as their employment or new intimate relationships (Neale and Smart 1999; McIntosh 2003; Laing 2006).

1.14 Arguments for the presumption of shared parenting or an equal distribution of contact time following divorce or separation have been criticised for ignoring how these transitions can destroy the child-rearing and breadwinning roles
that were in place while the parents were living together (Smart 1997). Parental activity cannot continue as before since all the other adult roles pertaining to those of parenthood have changed, and equity in parenting is unworkable in the vast majority of families where it has not been the pre-divorce pattern (Walker et al. 2004). The expectation in law that separating parents should transform themselves into partners who co-operate in child-rearing means that they must be at their most selfless, doing whatever will impact least on their child whatever that implies for themselves, at the same time as trying to renew their identities and adjust to fundamentally distinct roles according to whether they are resident or non-resident (Smart and Neale 1999; Ahrons 2004). Faced with an array of different considerations and options occurring at difficult times in their lives, separated parents are likely to reach different conclusions about what is the right way to arrange contact, leading to disagreement and conflict.

**Conflict between separated parents**

1.15 The negative impact on children of conflict between separating or separated parents has been widely observed (e.g. Whiteside and Becker 2000; Wild and Richards 2003; Rees et al 2010). The potential for children to be exposed to conflict in disputes over contact is an important consideration in a court case regarding contact, and is a central issue for our research.

1.16 A study of parents and children from 61 separated families in England developed a categorisation of co-operating and conflicted parents (Trinder et al. 2002). The authors observed, for example, that families in which co-parenting was most harmonious often represented a looser reconfiguration of the previous family structure, with family members enjoying regular contact and living near each other. Harmonious contact and co-operation between parents in other families in the sample, however, was maintained somewhat reluctantly, and some parents were separated by considerable geographical distances. Each of these harmonious configurations was seen to make huge demands of parents. Parents in reconfigured families, for example, were rarely in full-time employment and fewer of them had new partners, a finding which appears to contrast with those that link non-resident fathers’ employment with a decreased rate or likelihood of contact (Simpson et al. 1995; Marryat et al. 2009). Conflicted families, on the other hand, were distinguished by the various stages or levels of conflict occurring within them. Although families in which conflict was routine and did not escalate to litigation appeared to fulfil many of the requirements of co-parenting, the presence of conflict was seen to cancel out the benefits of contact wherever it took place.

The nature and quality of the relationships and communication between all family members are key factors affecting children’s outcomes in separated families in the US and England (Johnston et al. 1989; King 1994; Hoffman 1995; Burghes et al. 1997; Pruett and Pruett 1998; Whiteside 1998; King and Heard 1999; Whiteside and Becker 2000; Dunn and Deater-Deckard 2001; Ahrons 2004; Cowan et al. 2007), and conflict between parents has been shown to have a strongly negative impact on children’s outcomes (Wild and Richards 2003; Rees et al. 2010). Since the relationships of separated parents in Scotland are likely to have a similar impact on their children’s
outcomes, it is therefore important to understand how they try to negotiate contact, and how family conflict emerges around contact.

1.17 Some authors criticise the tendency of both literature and legal procedure to treat conflict resolution as the equal responsibility of both parents in a ‘conflicted family’ in cases where one parent may be more responsible for generating conflict (Kelly 2003; Friedman 2004). It has been argued both that fathers are more likely to be seen as the source of conflict (because they are more likely to be the non-resident parent and the initiator of the court action) and that mothers are more likely to be cast as ‘implacably hostile’ or obstructive (because they are usually the resident parent and the defender in a case) (Kelly 2007; Wallbank 2007).

1.18 The contradictory views of parents in conflict can lead to divergent accounts of family life. These differing views can be a challenge to reaching consensus in court. For instance, significant discrepancies in the levels of involvement of fathers reported by parents who live together have been found to be positively associated with reported levels of conflict between these parents (Mikelson 2008), and studies of separated parental couples have shown that the levels of contact they report are inconsistent (Braver et al. 1991; Simpson et al. 1995). Separated and divorced parents have cited radically divergent choices or preferences in relation to contact (e.g. going to court or not, or allocations of equal, differential or no contact time) on the basis of their children’s welfare (Smart and Neale 1999; Kaganas and Day-Sclater 2004; Laing 2006; Wilson 2008). This may reflect the different solutions they see to the moral dilemmas of making arrangements for children following separation or divorce. In a Scottish court action in respect of contact, however, any contradictory views held by parents in conflict are set against the court’s preference, implicit in the minimum intervention principle, for them to reach a consensual resolution between themselves rather than through a court order that may favour one or other party’s case. If it is understood by parties that a court order is only likely to be forthcoming to ensure a child’s welfare, the child’s interests become a centrally contested issue (Mantle et al. 2007), and any assertion of the children’s welfare or of the risk posed to it by another party inevitably contributes to the argument that is taking place:

*Interests, like needs, are not a quality of the child; they are a matter of cultural interpretation which will certainly be context-specific and may well vary amongst various stakeholders who believe they have the wisdom to shape children’s futures.*
*(Woodhead 1997, p. 80)*

1.19 It is important, given the perception that a responsible parent will put their child’s interests ahead of their own, for any examination of how contact actions are argued in court to be alert to the possibility that statements of the child’s best interests may represent a proxy for parental interests (James 2008; Smart 2004). Whether parental disagreements about children’s needs are understood as the expression of distinct points of view or as discourse, they may represent a significant barrier to a process that aims to achieve
agreed solutions to contact problems through a focus on what is best for the child.

Using the courts to make contact arrangements

1.20 The previous section explored how parents in conflict about contact have different perspectives on how that conflict arises and how it may be resolved. A small number of parents (and grandparents) in conflict decide to take court action in order to make arrangements for contact. This report is centrally concerned with these decisions and must, therefore, address how people experience the functions of the Scottish sheriff court. Research on the family courts in England is relevant here since there are parallels in the use of minimal intervention and the centrality of the welfare of the child (see e.g. Advisory Board on Family Law 2001). There are, however, significant challenges for the courts in upholding these principles. Making contact work over time involves repeated renegotiations, but using legal processes to resolve contact disputes can escalate hostility. For this reason, some commentators question the assumption that court-based processes can work to improve the well-being and functioning of families (Trinder and Kellett 2007; Singer 2009; Trinder et al. 2009). Parents who had been involved in English legal proceedings in respect of contact reported high levels of stress at the conclusion of the actions (Buchanan and Bream 2001; Bream and Buchanan 2003). Contact arrangements are subject to a wide range of internal and external influences such as proximity, working patterns, health, and financial situations (Walker et al. 2004), and what works in terms of contact for one family may be inappropriate or unmanageable for another. Neither can it be assumed that contact should always be legally enforceable as an optimum outcome (Eekelaar 2002).

1.21 Litigants’ expectations of court action in England are often not met since the legal process does not address non-legal problems associated with disputes over children (James 2003). The research we report on builds on the findings of studies in England and seeks to establish why parents and grandparents in Scotland take court action over contact, what they expect to gain by it, and has invited them to reflect on whether they achieved this. The reasons given by parents in previous studies for starting court action are varied, and court action ostensibly about a child contact dispute can become enmeshed in complex arguments concerning finances and property, beliefs about parenting and responsibilities, new relationships, or blame for the previous relationship (Smart and May 2004). Wilson et al. found, in the discourse of Scottish non-resident fathers, a tension between a desire to see their arguments regarding contact vindicated in the courts and a belief that the courts were biased against fathers in general or were unlikely to effect change (Wilson et al. 2004).

1.22 One of the challenges for policy, then, is how to deal with the social implication of complex ethical and emotional conflicts between parents that may have a bearing on the legal issue of their contact dispute (Masson 2000). Few current court systems are equipped to manage these conflicts effectively, with the result that parents are often left dissatisfied with the purely legal remedies that are negotiated. The programme of reform in the Australian
family law system in recent years has been a promising initiative in this respect, intended to allow courts to work collaboratively with parents to focus on outcomes that are practical and in the best interests of the child (Wasoff 2007; Smyth 2009). While evaluation of these new measures is ongoing, there is some evidence that an approach based on direct consultation with children and judicial management to minimise the negative impact of the dispute on family relationships has led to a reduction in self-reported acrimony and an increase in self-reported parental co-operation (McIntosh et al. 2008; McIntosh 2009). Scotland’s court system incorporates a variety of mechanisms for consulting children and measures designed to minimise parental conflict and recrimination when negotiating a solution. In the next sections, we describe the current evidence base as regards involving children in making decisions about contact, which forms an important context for our later findings about how the Scottish court system operates in this regard.

Involving children in making contact arrangements

1.23 The UNCRC is intended to guarantee children their own rights and responsibilities, and Art. 12 of the Convention stipulates that their voices should be heard. Scottish Government policy outlined in the document Getting it Right for Every Child (Scottish Government 2008) places a central emphasis on children’s participation in decisions affecting them. Sociologists and anthropologists have increasingly emphasised that children can and do act to influence their own lives, developing identities in response to their circumstances, but this capacity for individuality is often not acknowledged in adult systems, where children have a dependent status (Brannen 1999; Balen et al. 2006).

1.24 Contact disputes represent one context in which it is particularly important that children should have an active input (Cashmore and Parkinson 2008; Morrison 2009). Children aged between eight and fourteen may grasp the root causes of their parents’ separation (Jennings and Howe 2001; Mantle and Critchley 2004), and children aged three to seven have displayed simple, accurate understandings of their parents’ divorce and an awareness that their parents harbour negative feelings towards each other (Ebling et al. 2009). Yet parents may often be unaware of the young age at which children can understand and hold views on their separation. Among 107 children (mean age 13) of separated parents in New Zealand, only 37 per cent said they had been consulted about contact and 19 per cent about which parent they might live with (Smith et al. 2003). Most of those who had been consulted felt that their views had not been a major determining factor in these decisions and wished that they had been.

1.25 Children in Scotland whose parents were separating or divorcing have also indicated that they wanted some say in where they live and how they spend their time, but they did not want to be asked to choose between their parents (Mayes et al. 2003). In a recently conducted survey of child contact in Scotland, however, most parents living apart reported that they did not consult their children when deciding contact arrangements (MRUK 2007). This suggests that Scottish parents involved in contact disputes may not be considering their children’s views in the ways children wish. The research on
which we report has gathered the views of both solicitors and parents undertaking court action in order to contribute to our understanding of why this may be the case.

Involving children in legal proceedings

1.26 Whether children have the opportunity to participate in court action is dependent on a number of factors. There are concerns that even where it is agreed that it is in a child’s best interests that they be involved in court proceedings, implementing this may be problematic. The autonomy and flexibility of approach inherent in professional practice and processes mean that there may well be inequity, particularly as regards whether children know about the options available to them and are able to assert their rights (Tisdall et al. 2004; Sutherland 2008). Children’s views, like children’s best interests, may become a focus of contention; if they are not in accordance with one parent’s wishes, that parent may understand, or be inclined to portray, the child as ‘unreasonable’ or may feel pressured to give a particular account of their views (Blank and Ney 2006; Cashmore and Parkinson 2008).

1.27 Scottish legislation, like much Scandinavian legislation, goes further than other UK legislation since it gives children the right to be party to proceedings about them if they are judged competent (Wasoff 2007). Mechanisms have been put in place for children to express their views to the court, and parents are legally required to consider their child’s views. Nevertheless, these mechanisms are often operated on behalf of children by adults, who make decisions about children’s competency. It can be difficult for children to express their views, particularly to someone with whom they interact for a very limited period, for a number of reasons. They may be afraid that they could be seen to be choosing between their parents, they may lack information and support, or they may feel relatively powerless and dependent on others (Mantle and Critchley 2004; Mantle et al. 2006).

1.28 Children may, under Scots law, secure their own legal representation in a court action, and children who have had their own solicitor have tended to feel that they had had a say in what had happened to them (Tisdall et al. 2004). Yet many children do not know how to secure the services of a solicitor, and are heavily dependent on parents and other adults as facilitators (Tisdall et al. 2004). Young people can find it difficult to talk in front of adults, and in front of both their separated parents. The physical layout and environment of the courtroom can prevent open discussion, and the skill of the adults involved can be crucial in engaging children (Murray and Hallet 2000). We will consider in this report how Scottish court procedure for contact actions takes account of such barriers to children’s participation.

Contact actions in Scotland

1.29 Relatively little information is available about the population of parents in Scotland taking court action in respect of child contact, or about how their cases proceed through the courts. In this section, we examine the current evidence relating to Scottish contact actions.
1.30 A recent examination of sheriff court records in Dundee, Dumfries and Galloway, and in Glasgow, has provided some indicators of these characteristics. McGuckin and McGuckin (2004) estimated that around a third of parents taking action in respect of contact had been married, and that around half had previously cohabited. Eight per cent of actions were brought by grandparents. Four in five cases that came to court resulted in an agreement being reached. Legal aid had been awarded in 59 per cent of cases, and pursuers were more likely to have received legal aid than respondents (43% as against 21%). Most hearings (87%) took place as child welfare hearings (CWHs), regarded as less adversarial and acrimonious than routine hearings in which members of the public may not be excluded and the sheriff’s role is restricted. The CWHs were thought to offer a swifter resolution to contact. Although children should have had the opportunity to attend these hearings, few had actually done so. It was also found that most of the problems that had brought parents to court related to changes in family circumstances that had taken place some time after the initial separation or divorce. This is consistent with the observation, in a study of Scottish non-resident fathers, that conflict between separated parents arose in response to family change, depending on the individual parents’ capacity to adapt their ideas about parenthood (Wilson et al. 2004). Finally, perceptions surrounding non-compliance with contact orders were central to the debate on the Family Law (Scotland) Bill through to its third reading. In the Scottish Child Contact Survey 2007 (MRUK 2008) nine of the 14 parents who had been to court to negotiate contact arrangements said they had returned to court due to what they perceived as non-compliance with contact arrangements that had been agreed. Nevertheless, a recent examination of the views of sheriff clerks suggests that cases of non-compliance with court orders are relatively rare (Wasoff 2006).

1.31 In the absence of further literature detailing what takes place during and following hearings regarding child contact in the Scottish court system, this research aimed to enhance understanding about parents who go to court over contact, and to demonstrate how CWHs contribute to negotiated solutions and how child contact actions proceed towards agreed solutions.

Summary

1.32 From our review of the literature, a number of issues arise which are relevant to our study, as follows:

1. Scottish legislation for addressing disputes over child contact, is based on the prioritisation of children’s general welfare, minimal intervention, and giving children a say in their situation. Little research has been undertaken on how this system operates or has changed since its introduction. An account of child contact cases in Scottish courts is therefore central to understanding the success of those policies. It also has the potential to inform policymakers and professionals in a wide range of jurisdictions.

2. Previous research evidence relating to Scottish families and the contact arrangements separated or divorced parents make between themselves suggests that those who go to court over contact represent a small and conflicted minority, about whom comparatively little is known. Establishing
why they and their legal representatives decide on action that other parents may believe to be detrimental or unlikely to be effective – in the face, moreover, of a legislative preference for not making contact orders – would help us to understand how their expectations are likely to be met by the Scottish court system.

3. Reducing conflict and improving family relationships are significant objectives in improving outcomes for children whose parents separate or divorce. These are seen by many as potential benefits of a court system that puts children first. It is therefore important to understand how, and to what extent, Scottish courts facilitate agreed solutions and bring about a focus on children. The child welfare hearing is now the backbone of the Scottish system for processing contact actions; more than ten years after the introduction of these hearings, it is timely to consider how they function now, and what the views are of the individuals and professionals who experience them.

4. The Scottish legal system follows the UNCRC in seeking to secure the best interests of the child, but identifying children’s best interests and views may present challenges. Court action over contact has been seen as a contested arena where statements of children’s best interests can reflect subjective arguments or points of view. Examining the Scottish court system and the interaction of parties and professionals within it can shed light on how parties and professionals work towards establishing what is best for children, and on the ways in which parents’ emotions and concerns for their children’s welfare impact on these negotiations.

5. Children are seen as requiring and wanting the opportunity to express their views on contact disputes and have them taken into consideration. However, previous research suggests that there may still be considerable barriers to parents consulting them, and to their active involvement in the deliberations of the court. In this respect, it is important to identify how children’s views are accessed and prioritised in Scottish contact cases, whether parents are aware of the necessity for this, and how sheriffs balance children’s views with wider definitions of children’s best interests.

6. The expectations of litigants undertaking actions in respect of contact are not always met, and concerns have been expressed about the sustainability of court-ordered arrangements. Describing how Scottish litigants think court action has enabled them to achieve their goals or has made an impact on their circumstances, and comparing their views with the perspectives of legal professionals, can illuminate how the Scottish court process contributes to the success of contact arrangements. A knowledge of how wider tensions in the separated family are lessened or resolved by going to court, and how agreements reached through the Scottish courts fare once a case leaves court, will help us to understand how the stability of separated families may be improved by reaching agreement in this way.

**The structure of this report**

1.33 The following chapters present research undertaken to address the issues identified above and inform policymakers and practitioners as to how and why Scottish actions in respect of child contact come to court and how they
proceed, and about the impact that court action has on the families involved. Chapter 2 provides an overview of the research methods, as well as giving an account of the data gathered. In Chapters 3–6 we present the findings of our research, structured according to the sequence of court action. Chapter 3 explores how pursuers make the decision to take court action. Chapter 4 focuses on CWHs, the main vehicle for contact actions in Scottish courts, taking into account the views of pursuers and legal professionals as well as observations of court hearings. Chapter 5 considers how court actions in respect of contact are brought towards a negotiated resolution while minimising conflict, and Chapter 6 details the outcomes of those actions and the effects on parents and children. In Chapter 7, we draw together the findings from across the study relating to how the views of children are gathered and balanced against considerations of their general welfare. Finally, Chapter 8 discusses the findings from the research and sets out our conclusions and recommendations.
2 RESEARCHING CHILD CONTACT CASES IN SHERIFF COURTS

2.1 The preceding chapter referred to the difficulties that parents can experience when parenting separately. Some difficulties are not easily overcome and contact cases need to be resolved by court action. In this chapter, we describe our research aimed at understanding child contact cases in sheriff courts. We wanted to know how parties experienced the process, and how conflict was overcome and arrangements put in place for contact. We also wanted to explore whether parties and courts kept the welfare of the child at the centre of the process and if so how. We describe:

- our approach and objectives
- the methodology we employed
- the data we collected

Our approach to the study

2.2 The Scottish Government commissioned this research in 2006 in order to understand more about the people who go to court about child contact and the way Scottish sheriff courts deal with child contact cases. We described the aims and objectives of the study in Chapter 1. Our task consisted of describing the characteristics and experiences of those who initiate court action in respect of contact and exploring the ways in which legal practitioners dealt with contact cases, and how the court process worked to resolve disputes. Finally, we wished to be able to identify the outcomes of court action for pursuers of contact cases, and their children.

2.3 We wanted to conduct a study which would give us an in-depth understanding of these issues, and hence we designed a mixed-methods approach which combined both quantitative and qualitative methods. This design, which is particularly suited to studying complex issues around families, enabled us to include a variety of perspectives in our analyses (Plano Clark et al. 2008). Utilising both qualitative and quantitative research methods enabled us to identify the general characteristics of pursuers and solicitors, and also to reflect in detail on the individual experiences of court users (Maxcy 2003).

Quantitative research methods

2.4 We wished to collect data from court staff, solicitors and parties in order to understand the court process from different perspectives. This is not an easy task, since the identity of pursuers in court is confidential. Nevertheless, court records provide a means of sampling from an entire population of court users. We considered examining court files or setting up a new data collection system for court staff to be too burdensome for a study of this size, but we were able to use the Scottish Court Service case management system (CMS) to establish the number and type of contact cases in sheriff courts. We were prohibited from identifying pursuers from the CMS, but we were able to identify firms of solicitors who were representing pursuers of newly lodged contact cases and conduct a postal survey via that method.
2.5 Postal surveys are an established and efficient way of gathering information on large groups of people in a standardised way. We were confident that using postal surveys would enable us to make valid claims about the population of court users and solicitors. In addition, questionnaires are appropriate for use with people who are under pressure or facing great demands on their time, who may not want to speak to a researcher face to face.

2.6 When cases are registered at a sheriff court, the primary crave (a specified outcome sought in the case) and a number of secondary craves are entered on the courts’ database. A crave for contact, however, can arise at different stages in a court application, for instance as a ‘fall-back’ option from a party initially seeking a residence order for a child or children to live with them. Craves entered at later stages are not necessarily retrospectively recorded on the CMS. We decided initially to sample all those cases that included a crave for contact within the first four weeks. We subsequently included all those cases where divorce was an initial crave, on the assumption that, for those with dependent children, contact issues may arise during the divorce process. We may have missed some cases, for example where contact arose from another kind of case, or where multiple craves were not entered routinely on the CMS.

2.7 A sample of pursuers was drawn from the baseline data about contact and divorce cases recorded on the CMS. We sent a questionnaire to pursuers in three Sheriffdoms via their solicitors within four weeks of them registering a case in court, along with a questionnaire for the solicitor. We estimated that we would receive replies from around two hundred contact pursuers (approximately one third of those who we estimated may register a contact crave in a ten-month period), and approximately 950 divorcing pursuers with dependent children. We were unable to estimate how many law firms or individual solicitors might be involved in distributing questionnaires for us or completing a questionnaire of their own.

2.8 We received 70 questionnaires from contact pursuers who had registered contact as a primary crave. Most of these respondents were non resident (93%) and most were male which is typical of the population of contact pursuers. This was 8 per cent of the 901 contact pursuers who started court action during the research period. We also received 153 questionnaires from divorcing clients (5% of all those applying for divorce), 43 of whom indicated that contact was an issue in their divorce case. These proportions were relatively low. There are several reasons why the response rate was lower than expected, including the following:

- some solicitors refused to take part in the research, or wanted to charge us for taking part
- some solicitors did not routinely record the court case number on their clients’ records, meaning that they could not identify their contact clients and thus forward a questionnaire
- we did not send out reminder questionnaires at this stage, so as to keep the burden on solicitors to a minimum
• some solicitors chose not to pass on the questionnaires to clients, for example if they knew they were in an emotional state or were subject to domestic abuse

Despite the low response rate, we were satisfied that we had a large enough sample of pursuers to be able to conduct meaningful analyses of the data generated. The characteristics of those completing a survey, in terms of gender and type of crave, were similar to those of the entire population we sampled from.

2.9 Survey respondents were invited to complete a follow-up questionnaire approximately six months after the start of their court case and questionnaires were sent out to them directly at that point, along with reminders some three weeks later. We received 23 follow-up contact questionnaires and 58 follow-up divorce questionnaires.

2.10 As was stated above, we relied on law firms to send out questionnaires to the clients on our behalf, and approximately four hundred law firms assisted us in distributing questionnaires to their clients. Solicitors in these firms were invited to take part in the study by completing a questionnaire themselves, and we received 126 questionnaires from solicitors working in those firms. Unfortunately, we have no way of knowing how many solicitors in total could have completed a questionnaire but chose not to. Nevertheless, we were satisfied with the number of responses we received.

2.11 We were granted remote access to the CMS in order to assess the number and type of contact cases being filed in three Sheriffdoms (comprising 27 courts). By using a filtering system provided monthly by the Scottish Court Service, we were able to ascertain from the CMS the gender of the pursuer, their primary and secondary craves, the date at which the case was filed, and the court at which it was filed. We compiled a database of this information that enabled us to build up a profile of all contact actions that were filed during the fourteen-month period October 2007–November 2008. This allowed us sufficient time, within the constraints of the study, to contact pursuers again some months afterwards if they had consented to this. A total of 901 cases involving a crave in respect of contact with a child or children were identified during this time. In addition, the cases lodged between October and December 2007 (182 cases) were examined in March 2009 in order to gain a longitudinal picture of process. Table 2.1 indicates the primary craves included in the 901 cases presented to court. In addition, 2,803 divorce actions were identified during this period. Of these, 3 per cent recorded contact as a secondary crave in the action at the time the divorce was filed. The 27 courts that were included in our sample for profiling of the number and type of contact cases ranged in size and caseload, with the largest filing 23 per cent of all cases.

---

2 These did not include simplified divorce cases. Simplified divorce craves are used where there are no children of the relationship, and no financial issues to resolve. Because we were sampling divorce cases that may have had contact issues, we did not include simplified divorce cases in our study.
Table 2.1  Primary craves of cases involving contact (excluding divorce cases)

<table>
<thead>
<tr>
<th>Primary crave</th>
<th>Percentage of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact</td>
<td>44</td>
</tr>
<tr>
<td>Parental responsibilities and rights</td>
<td>28</td>
</tr>
<tr>
<td>Residence</td>
<td>9</td>
</tr>
<tr>
<td>Declaration of paternity</td>
<td>6</td>
</tr>
<tr>
<td>Other</td>
<td>13</td>
</tr>
<tr>
<td>Total (N)</td>
<td>901</td>
</tr>
</tbody>
</table>

2.12 The majority of contact cases were brought before the courts by men (89%). Four contact cases were recorded as having two pursuers, male and female; these cases involved grandparents as pursuers. By contrast, most divorce cases (67%) were pursued by women, irrespective of whether there was also a contact crave.

2.13 In summary, we gathered quantitative data via:

- a data set drawn from the CMS of all Scottish sheriff courts
- questionnaires distributed via solicitors to all pursuers involved in an application for contact or divorce in three Sheriffdoms
- a follow-up survey of those pursuers who agreed to be contacted again
- a survey of solicitors

Characteristics of contact pursuers who completed a questionnaire

2.14 We received 223 questionnaires from pursuers who had registered contact as a primary crave or who were divorcing parents with a contact issue. Sixty per cent of respondents with contact issues were male and 40 per cent female. Women were more likely than men to be pursuers of divorce as a primary crave with contact as a secondary crave, whereas men were more likely to be pursuers in contact-only cases (74% of contact-only pursuers were men). Two-thirds of contact-only female pursuers were grandparents, and only a few were mothers pursuing contact as a primary crave. These proportions were similar to those of all court cases that took place over the period of the research, although we had a slight over-representation of women in our contact-only survey sample and, although the CMS did not record whether pursuers were mothers or grandmothers, our observations and interviews led us to conclude that relatively few mothers do in fact pursue contact as a primary crave. Ninety-four per cent of contact pursuers were white, the remainder being of mixed race, Indian or Pakistani origin. The majority of pursuers were either single (49%) or separated/divorced from their partner (31%). Thirty-four per cent were employed full-time, and 20 per cent were unemployed, as Table 2.2 shows.
Table 2.2  Employment status of contact pursuers

<table>
<thead>
<tr>
<th>Employment status</th>
<th>Number of contact pursuers</th>
<th>% of contact pursuers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employed full-time</td>
<td>38</td>
<td>34</td>
</tr>
<tr>
<td>Self-employed</td>
<td>10</td>
<td>9</td>
</tr>
<tr>
<td>Homemaker</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>Employed part-time</td>
<td>11</td>
<td>10</td>
</tr>
<tr>
<td>Unemployed</td>
<td>23</td>
<td>20</td>
</tr>
<tr>
<td>Retired</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Unknown</td>
<td>13</td>
<td>12</td>
</tr>
<tr>
<td>Total</td>
<td>113</td>
<td>100</td>
</tr>
</tbody>
</table>

Twelve per cent of contact pursuers stated their usual occupation to be managerial or professional, and 19 per cent stated it to be unskilled. The remainder were usually employed in skilled or semi-skilled occupations. Twenty-two per cent of contact pursuers stated that they were living with a partner at the time the case was started, and 10 per cent stated that they were living in a household which included someone else’s children.

Characteristics of solicitors surveyed

2.15 We received 126 questionnaires from solicitors in nineteen Sheriff court areas. The majority of responses were from solicitors representing clients in Glasgow, Aberdeen or Falkirk. Most of the respondents were very experienced solicitors, with 76 per cent having been practising family law for over ten years. There were an equal number of male and female solicitors, and the majority of solicitors stated that over half of their work is devoted to family law. One in five solicitors had been trained in family mediation, but few had practised it. Nineteen per cent had been trained in collaborative law techniques and 13 per cent had used these techniques.

Qualitative research methods

2.16 Few people witness what actually happens during child welfare hearings (CWHs) since they are conducted in closed courts and so we wanted to explore this specifically. Contact actions usually require a date to be set for a CWH, the procedural rules of which are distinct from those of other hearings in ordinary cause actions. This hearing will be fixed for the first suitable court date occurring no sooner than 21 days after the defender notifies the court of their intention to defend the action. Its scheduling will also reflect any urgency recognised in the case by the sheriff, and the timetable of the court; some courts, for instance, have particular days allocated to CWHs and family actions.

---

3 Percentages in tables may not always total 100, owing to rounding.
4 Data on the characteristics of contact pursuers in Scottish courts have not been collected before, so there are no baseline data to compare with ours.
5 If some contact actions do not involve a CWH, this may for example be because contact has only been entered as a relatively minor, uncontroversial or undefended crave at a later stage of a family action for divorce. See Ch. 4 for further details on the distinctions between CWHs and other types of hearing.
6 Sheriff Court Rules 33.22A(1).
CWHs were of particular interest to this study, since they have not been fully researched since their introduction in the Children (Scotland) Act 1995 and are a unique feature of the Scottish court procedure in relation to child contact. We observed 20 CWHs, at four case-study courts which included a major urban court and one in a small rural location. Sheriffs and solicitors in all four case-study areas were extremely helpful and accommodating of our attempts to organise these observations. Our observations of other procedural hearings that took place within contact actions held in open court on the days we attended were also informative. Using observation is an appropriate method in this context (Lofland et al. 2005) and allowed us to build up an understanding of child welfare hearings at first hand and to describe how they are conducted.

2.17 We also wanted to gain a richer account of pursuers’ experiences of court action than that gained via the survey. Individual interviews are the best means of allowing participants to express and evaluate their experience in their own terms. Interviews were conducted by telephone rather than face to face so as to lessen the impact on home life. We were also aware that telephone interviews can be a more neutral and secure means of talking about contact (Sturges and Hanrahan 2004; Jordan 2006; Holt 2010). We have found this approach to be successful in the past when talking to parents about emotive family issues such as relationships, conflict and child contact (Walker 2001; Walker et al. 2004; Laing 2006; Walker et al. 2010).

2.18 Respondents who completed an initial questionnaire were asked to indicate whether they would consent to speaking with a researcher on the telephone. We received consent from 37 of the 70 individuals who returned a questionnaire in respect of contact actions and 41 of the 153 who returned a questionnaire in respect of divorce actions. We were able to contact and interview by telephone 35 of the 78 pursuers who had agreed to be contacted by telephone when they completed a questionnaire. The characteristics of this sample are outlined below:

- 27 interviewees were fathers, 5 were mothers, and 3 were grandmothers taking action in respect of contact with grandchildren
- 29 respondents (24 fathers, 2 mothers and 3 grandmothers) were initiating court action in respect of contact, and 6 (3 fathers and 3 mothers) in respect of divorce
- the ages of respondents (where supplied) ranged from 21 to 53, with a mean of 37
- 12 respondents were in receipt of legal aid
- 14 reported that contact took place at least weekly
- 20 cases involved one child; no cases involved more than 3 children
- the median age of the eldest child involved was 5 years, with a range from under 1 year to 12 years

7 Some of the respondents in the divorce sample did not indicate that contact issues were involved in their cases, and so we did not attempt to include them in our interview sample at this stage.
• the cases were fairly evenly distributed across courts in Tayside and Fife and Grampian, Highland and Islands, but only 3 were being heard at Glasgow Sheriff Court

In the initial interviews, participants were asked about:

• the background to their case
• why they had decided on court action
• how they had gone about starting the action
• how their children had been involved or affected
• their experiences of court action

2.19 Although all the 35 pursuers consented to be contacted for a follow-up interview, we were unable to recontact some of them. Phone numbers for three respondents were no longer working, while another 11 respondents did not answer or were repeatedly not available at the arranged times. From the initial cohort of 35 pursuers we were able to contact 21 for a follow-up interview (19 fathers, one mother and one grandmother). This was fewer than we had hoped for, but we were satisfied that the sample was sufficiently diverse to allow us to explore emerging themes with confidence. Participants’ cases were at different stages by the time of their second interview. Some had concluded, some were sisted (put on hold by the sheriff), and others were ongoing. The interviews at this stage asked about:

• the progress of the case
• the outcomes of the case
• costs (financial and otherwise)
• the impact of going to court
• participants’ perceptions of the court process
• participants’ views on undertaking court action

2.20 All the interviews we conducted were transcribed and anonymised. Transcripts and notes were held in an electronic data set and analysed together following the principles of grounded theory. Data were repeatedly coded to identify themes, and through discussion the researchers arrived at a consistent understanding of the entire data set.

2.21 We also conducted in-depth face-to-face interviews with six sheriffs and eight sheriff clerks at four courts, a higher number than we had expected to interview. We asked them about how they deal with parties and solicitors and prepare for hearings, and about their roles and responsibilities during a CWH. They were also asked how CWHs compare with other hearings.

2.22 In summary, we gathered qualitative data via:

• observations of twenty child welfare hearings in contact cases in four courts
• 35 initial and 21 follow-up telephone interviews with pursuers involved in court action regarding contact
• 14 in-depth interviews with sheriffs and sheriff clerks
Caveats of the research

2.23 As in any research study involving complex processes and studying human relationships, there have inevitably been challenges. These challenges have led us to urge caution when interpreting the findings from the study, in a number of areas.

2.24 Firstly, we were not able to speak directly to children whose parents, or grandparents, were involved in contact actions. We realised that it was desirable to hear the voices of children, especially since that is a key aim of the court system itself when dealing with contact cases. Nevertheless, we were aware that there are ethical risks in consulting with children when they are involved in contact cases. It is difficult to identify children retrospectively who have been the subject of contact actions, something which proved impossible within the scope of this study. We have tried to remedy this by taking into account previous studies exploring children’s views in Scotland as well as the views expressed by pursuers in our study, who were mostly fathers and reporting on them in Chapter 7.

2.25 Secondly, contacting respondents via solicitors may have had a negative impact on our return rate. We had no control over the distribution of the questionnaires, and solicitors may have been selective in their distribution. Furthermore, our sampling was based on the timeliness of the data recorded on the CMS. This meant that we were unable to contact defenders of contact actions, whose details are usually entered later than pursuers’ and thus the views of respondents and interviewees are predominantly those of men, and of non-resident parties.

2.26 Thirdly, many cases were still ongoing at the time the research ended. We are limited as regards what we can say about the longer-term outcomes for the pursuers still engaged in court action. We also have no way of knowing the longevity of the arrangements that were made in cases that had ended. In addition, although we wished to undertake a comparison between legally aided and non legally aided clients in order to identify any variations in process, we were limited in this regard, as it was often difficult to tell via the survey responses whether clients were legally aided or not. The amount of missing data thus meant that robust analyses were not feasible.

2.27 Nevertheless, the data exhibit a number of strengths. We have been able to sample from the entire population of pursuers taking action in respect of contact in three Sheriffdoms. This has meant that in both the survey and the interview samples we achieved considerable diversity. We are satisfied with the richness of the observation and interview data, which have provided us with valuable insights. By gathering data from pursuers at two points we were able to examine their views over time, and start to identify the impacts of court action. Finally, our observations of CWHs, which take place in closed courts, add a unique dimension to the study of contact cases.
Summary

2.28 This research report draws on:

- a data set of court information on 901 cases which involved a crave for contact
- 70 initial and 23 follow-up questionnaires from individuals undertaking contact actions
- 153 initial and 58 follow-up questionnaires from individuals undertaking divorce actions (some of which included a crave for contact)
- 126 survey questionnaires completed by solicitors
- 35 initial and 21 follow-up in-depth interviews conducted with pursuers
- 20 notated observations of Child Welfare Hearings
- in-depth interviews with six sheriffs and eight sheriff clerks

2.29 In the following chapter, we present our findings arising from the data described in this chapter. We start at the beginning of the process. We explore why people start court action to arrange contact and how they feel about doing so. We also look at what pursuers expect to happen.
3 STARTING COURT ACTION

3.1 In the previous chapter, we described the research methods we adopted and noted the limitations and strengths of the research. In this chapter we focus on the start of court actions, looking specifically at:

- the reasons people gave for pursuing court action
- people’s expectations and feelings as they embarked on court action

We draw on the data we obtained from the first wave survey of pursuers, our initial in-depth interviews with pursuers, the survey responses from solicitors, and our enquiries about court processes during conversations with legal professionals and court staff. We begin by examining how disputes relating to contact arise and how they progress to court.

Background to child contact cases

3.2 Contact cases are family actions in which a crave is entered in respect of contact with one or more children. These cases are almost always heard in a sheriff court. We asked pursuers to explain why they had started a court action and to describe their thoughts about child contact at that time. Our analyses of their accounts indicates a clear trajectory in their decision-making:

1. A problem with contact was identified.
2. This problem escalated and other problems often emerged.
3. It was impossible to resolve the problems consensually.
4. Legal advice and representation were deemed necessary.
5. Court action appeared to be the appropriate course to take to settle the contact problem satisfactorily.

We explore these readily identifiable but potentially overlapping stages before examining the decision to take court action.

Problems with contact

3.3 Contact usually takes place by arrangement between parents, or between parents and grandparents. Problems regarding these arrangements are of three types:

1. There is no arrangement for one parent or grandparent to see a child, and contact is not taking place.
2. There is dissatisfaction with an existing arrangement for contact (e.g. on the grounds that it is too brief and/or that it is too infrequent or is taking place in inappropriate circumstances).
3. There is dissatisfaction with how an agreed arrangement is being adhered to (rather than with the terms of that arrangement per se).

---

8 Family actions are a category of ordinary cause actions.
9 In some specific instances, such as cases involving an alleged breach of the Hague Convention, contact cases may be heard in the Court of Session. This is a relatively rare occurrence.
All the non-resident parents and grandparents we interviewed described their contact issues in one of these three ways. In the following paragraphs (3.4–3.8) we examine each of these in turn.

3.4 Some of those we spoke to had been unable to see the children who were the subject of their action for several months. Two grandmothers, for example, told us about the grandchildren they had cared for in their own homes. They stated that the mothers of the children had taken the children from them, and both grandmothers had subsequently been refused contact. In a few cases, pursuers did not know where their children were living. Others, who did know, said that they did not feel they could risk going near the children as this would invite the resident parent to call the police, or might count against them in their contact action. Most of those who did not see their children stated that their requests for contact had been ignored or refused by the resident parent.

3.5 In survey responses, 21 per cent of pursuers indicated that contact was not taking place at all. Divorce pursuers without contact issues were significantly less likely than contact pursuers (with/without a divorce crave) to state that they had no contact with some or all of their children, and a greater proportion of them than the contact pursuers saw their children more regularly than once a week (Table 3.1).

Table 3.1 Levels of contact with children

<table>
<thead>
<tr>
<th>Amount of contact</th>
<th>Contact pursuers with/without divorce crave (%)</th>
<th>Divorce pursuers without contact issues (%)</th>
<th>Total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than once a week</td>
<td>24</td>
<td>39</td>
<td>31</td>
</tr>
<tr>
<td>Once or twice a week</td>
<td>20</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>Less than weekly</td>
<td>27</td>
<td>28</td>
<td>27</td>
</tr>
<tr>
<td>Not at all</td>
<td>30</td>
<td>13</td>
<td>21</td>
</tr>
<tr>
<td>Total 100% (N)</td>
<td>100 (101)</td>
<td>100 (104)</td>
<td>100 (205)</td>
</tr>
</tbody>
</table>

3.6 Most contact problems, therefore, concerned existing arrangements. This is consistent with the views expressed by sheriff clerks (Wasoff 2006). The majority of contact pursuers (including those with a divorce crave) in our survey were seeing their children at least once a week when they started court action (52%). However, although most of those without a divorce crave were seeing their child, only 44 per cent saw them once a week or more. Of all contact pursuers, 59 per cent had overnight contact with their child in the month prior to starting the court action, as against 80 per cent of divorcing clients with no contact issues.

3.7 In interviews, non-resident parents told us about the existing contact arrangements which they had found unacceptable and which the resident parent had refused to change. Some fathers expressed frustration at not being able to see their children overnight or for a sustained period during holidays, or found the quality of their contact time to be compromised by its brevity or by difficult travel arrangements. Others, particularly fathers of very young children, were only able to see their children in the presence of the
child’s mother or her relatives, and expressed resentment that they could not spend time with the children among their own family.

3.8 The commonest complaints we recorded in interviews concerned the reliability or flexibility of existing contact arrangements. Those who had been seeing their non-resident children typically described themselves as being chronically ‘messed around’, or described contact as taking place at the resident parent’s whim. They said they were never sure of when they were going to see their children. They spoke of visits being cancelled with no notice, in some cases after they had travelled considerable distances. As well as complaining of being told ‘You’re not getting them’, some interviewees complained about demands from the resident parent that they should accommodate contact visits at unarranged times. One parent told us he would often find his children ‘dumped’ on him at no notice. The few resident parents we interviewed were concerned that the child’s other parent was not fulfilling contact arrangements satisfactorily.

3.9 For pursuers, then, contact arrangements had broken down completely, were not what they wanted, or were, in their opinion, being flouted. We asked survey respondents to indicate the specific issues they wanted the court case to address. Their objectives reflect the pattern of contact problems described above, with most pursuers wanting a change to the contact that was already taking place. As Figure 3.1 shows:

- the majority of pursuers who had contact issues wanted children to have more contact with a parent
- having no contact was an issue in just under 20 per cent of cases
- being able to have overnight stays was an issue in 54 per cent of cases
- 50 per cent of pursuers indicated that they wanted to ensure the reliability of contact arrangements
3.10 Contact with grandparents was more likely to be mentioned as an issue by fathers than by mothers in our survey. Across the UK paternal grandparents are usually less likely than maternal grandparents to maintain contact with grandchildren when relationships between parents break down (DCSF/Cabinet Office 2008). Mothers and fathers aged over 30 were significantly more likely than those under 30 to state that they were seeking resolution about holidays.

3.11 Despite the problems they were experiencing with contact, most pursuers still described strong bonds with the children in the case. Pursuers seeking contact also reported a good quality of communication with their children. As Figure 3.2 indicates, 79 per cent thought it was very, or fairly, good, and only 12 per cent thought it was non-existent. Communication with children, then, was seen as being better than communication between parents. Divorcing parents without contact issues were significantly more likely to state that this
communication was good than were parents with contact issues (whether or not divorcing).

**Figure 3.2** Perceived quality of communication between pursuers and children at the beginning of court action for contact or divorce (n = 223)

<table>
<thead>
<tr>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 10 20 30 40 50 60 70 80</td>
</tr>
<tr>
<td>Very good</td>
</tr>
<tr>
<td>Fairly good</td>
</tr>
<tr>
<td>Adequate</td>
</tr>
<tr>
<td>Poor</td>
</tr>
<tr>
<td>Non-existent</td>
</tr>
</tbody>
</table>

3.12 Communication with children was likely to have been taking place between contact visits as well as during them, but the majority of contact problems were around visitation rather than around other forms of contact. Forty per cent of contact pursuers had spoken to their children on the phone in the previous month, and 15 per cent had been in touch by text message. Few pursuers had been in touch with children by letter or email, perhaps because many of the children involved in the court cases were relatively young, as we described in Chapter 2. Forty-nine per cent of pursuers with contact issues had not communicated by phone, letter or electronic means.

3.13 In this section we have described how most pursuers were able to see their children, and that the most common issues concerned how contact was taking place. It has been observed elsewhere that contact problems occur throughout childhood, frequently arising within ongoing contact arrangements (Smart and Neale 1999; Smart and May 2004; Wilson 2008). Pursuers generally perceived strong bonds with their children, and many were in touch by phone as well as through visits. Nevertheless, these people had chosen court action to resolve contact issues. They had found that their problems with
Problems with contact that had become severe

3.14 As well as defining their problems with contact, pursuers emphasised the severity of these problems. This perceived severity was often related to the impact of the problems. If the problems were causing negative impacts, they were seen as being particularly severe. Parents and grandparents who had no contact feared that they would not see the children again. They had become upset, tearful, or, in the words of one, ‘soulless’. These experiences are consistent with the grief reported by non-resident parents elsewhere (Kielty 2005; Eardley and Griffiths 2009). Some parents said they had found it difficult to function at work, had become socially withdrawn, or found that people they knew avoided them. One mother, for example, told us that she found it difficult to be sociable when everyone she knew was talking about their own children, and a father told us:

… It’s a hard thing to do. You know, you’re surrounded by all these people, and they want to talk to you, but you don’t feel like you can talk to anybody, because at the back of your mind you’re always thinking that they’re gonna actually judge you.

3.15 Several interviewees told us they had received, or were receiving, medical treatment for depression, and some told us they had attempted suicide. Others described panic attacks or not eating. Some fathers acknowledged that the distress they experienced arose both from the difficulties they faced in seeing their children and from the conflict between themselves and the child’s mother. One father reported:

Things, as I said, were very emotionally charged, very intimidating for me. I got quite upset, very, very depressed if I’m honest, and I wasn’t sleeping or eating properly. It was really destroying my life, to be perfectly honest, I was that upset with all the hatred and nastiness that was directed towards me from my ex-partner.

3.16 Grandmothers, however, did not attribute their negative feelings to their relationship with the defender. They described their distress at having lost contact with children whom they had raised from their earliest years. One told us:

… when I see my granddaughter up the town, that’s when it really hurts, kenning that I can’t go and give her a kiss or a cuddle or talk to her or anything like that, and that’s the worst part of it.

3.17 A few pursuers mentioned the impact problems with contact had on other family members. One father told us his case was ‘about contact with my mum as much as it is me’, while another described his mother being in a very depressed state during the time he was unable to see his child. On the whole,
however, pursuers’ accounts suggested that they were focused on their own contact relationship with their children. The one resident mother we spoke to described allowing her ex-partner less contact because he was letting the children stay with relatives rather than spending ‘quality time’ with them himself.

3.18 The perceived severity of problems was not just limited to their impact on the adults in the case, but related to the children too. A prevalent reason for going to court, given by 34 per cent of those in the survey, was concern about a child’s well-being. Pursuers who were grandparents were significantly more likely to state that they had gone to court regarding this (78%, as against 28% of parents). One grandmother and two fathers among our interviewees said that they were worried about the effects of loss of contact on the well-being of a child in the case. Others expressed concerns about their child’s or grandchild’s welfare or safety in the care of their resident parent, in relation to:

- the unsuitability of other people in the child’s household
- the unsuitability of child carers
- the resident parent’s own capacity to protect the child’s welfare

Some pursuers felt that the welfare of their children was suffering. Nevertheless, they rarely wanted the contact case to deal with these issues, and often contradicted themselves during conversations about any alleged neglect or abuse. One pursuer, for instance, complained at some length about the state of his ex-partner’s house, alleging serious and violent alcoholism on her part and general disregard for their children’s interests. At other points he portrayed her as a ‘good mother’ and said he was seeking only the resumption of the contact visits he had previously enjoyed, rather than, for instance, to have the children taken from their mother or to initiate some intervention to improve their home environment.

3.19 Over a quarter of those we spoke to also mentioned a defender’s allegations of abuse, harassment or violence, and sometimes interviewees recounted their own ‘atrocity stories’ in the context of talking about these claims. A grandmother, for instance, told us that her daughter had hit her. Her daughter had also accused her grandmother’s partner of violence against herself. A few interviewees acknowledged violent behaviour on their own part. For instance, one father told us that he had hit his wife’s partner, but that this had been to defend himself against an unprovoked attack. We were usually told that the defender’s allegations were unfounded and had subsequently been dropped. With only one version of events, the truth of or intent behind either party’s allegations cannot be established, but these reports indicate at least that many of the cases in our sample were of a particularly embattled nature.

3.20 Of those we interviewed, two contact pursuers and two divorce pursuers were resident parents or carers (three male and one female), while five non-resident pursuers were female (including two grandparents). While we are limited as regards what we can infer about the reasons resident parents and non-resident women go to court over contact, their accounts allow a useful comparison with those provided by male pursuers and non-resident pursuers.
Non-resident mothers and grandmothers we spoke to complained of being denied contact and of contact times being unreliable, and spoke of the need to establish an agreement about how contact should take place. Like the non-resident fathers, they said they had felt controlled by the resident parent to some extent, and spoke of allegations of emotional abuse being made against them by resident parents. Resident parents, on the other hand, described themselves as taking unilateral decisions to restrict or cease contact, and spoke of themselves as entitled to exercise such control. The problems identified by non-resident pursuers taking court action in respect of contact thus appear broadly similar whether the pursuers were fathers, mothers or grandparents; while resident parents’ accounts showed distinct differences that corroborate to some extent the perspectives of the non-resident pursuers.

**Problems that could not be resolved**

3.21 Serious problems with contact are not in themselves a reason for going to court, since if parents can resolve them between themselves they do not need to be taken further. Many contact problems resolve themselves over time, as children get older or circumstances change (Walker *et al.* 2004). Most respondents going to court, however, described ongoing contact problems as something they had been unable to resolve with the defender owing to poor communication or to what they saw as the intractability of the other party.

3.22 Sixty-two per cent of parents with contact issues had been in contact with the other parent of the child during the month leading up to the court case, but this figure was significantly lower than that for divorcing parents with no contact issues, 77 per cent of whom had been in touch with each other. Contact between parties generally took place in order to discuss:

- arrangements for contact (69%)
- the child’s welfare (42%)
- financial matters (24%)
- the court action itself (28%)

In most cases, however, this communication was not resolving contact problems. Over two-thirds of survey respondents (68%) had started court action because they had been unable to reach agreement with the defender by any other means. In interviews, non-resident pursuers consistently represented resident parents as intractable, describing them as awkward, ridiculous, verbally abusive, fickle, immature, selfish, temperamental, jealous, gloating, or adamantly opposed to agreement. In some cases, difficulties were attributed to changes in circumstances, such as the arrival of a new partner, or a change in employment. Some pursuers were also concerned about interference by other family members. Complaints that they felt controlled by a resident parent were widespread among the pursuers we interviewed. They spoke, for example, of being ‘dictated to’ or of having no choice about how contact would take place, and said that they felt unable to challenge this or felt that contact would be curtailed or removed if they did. The quantitative data reflect these perceptions. A significant difference emerged between parents who had contact issues, 61 per cent of whom rated
their communication as poor or non-existent, and divorcing parents who had no contact issues, 69 per cent of whom reported very or fairly good communication. On the whole, those with contact issues rated communication between parents as being of poorer quality than those with no contact issues rated it, as Table 3.2 shows.

Table 3.2 Perceived quality of communication between parents

<table>
<thead>
<tr>
<th>Pursuer description of communication between parents</th>
<th>Pursuers with contact issues (%)</th>
<th>Divorcing parents with no contact issues (%)</th>
<th>All pursuers (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very good</td>
<td>7</td>
<td>17</td>
<td>12</td>
</tr>
<tr>
<td>Fairly good</td>
<td>20</td>
<td>51</td>
<td>36</td>
</tr>
<tr>
<td>Adequate</td>
<td>12</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Poor</td>
<td>21</td>
<td>8</td>
<td>15</td>
</tr>
<tr>
<td>Non-existent</td>
<td>40</td>
<td>15</td>
<td>27</td>
</tr>
<tr>
<td>Total 100% (N)</td>
<td>100 (103)</td>
<td>100 (109)</td>
<td>100 (212)</td>
</tr>
</tbody>
</table>

Seeking help: services and solicitors

3.23 Those with contact problems have a number of options before they seek court action, including counselling, mediation, advice services and contact centres, as well as seeking legal advice from a solicitor. Our respondents were, inevitably, among those for whom legal or other services had not prevented a court action. They were also predominantly male, and the problems non-resident fathers have in engaging with family services has been noted elsewhere (Eardley and Griffiths 2009). At the time they had initiated the court action, few people in our survey had consulted support services other than their solicitor. Nevertheless:

- 17 per cent had seen a mediator
- 12 per cent had had counselling or therapy
- 8 per cent had consulted an advice service
- 2 per cent of pursuers had used a contact centre

Interviewees also reported seeking support from a number of other sources, such as the Police, an MP, social workers, GPs and domestic abuse services.

3.24 All those we interviewed said that they had been unable to achieve a resolution through these interventions because the other party had refused to participate, or had done so in a way that rendered the process ineffective. A mother, for example, told us that her husband refused to consider mediation. A father told us that, in his view, mediation might work for others but not for himself since his ex-wife was unrelentingly ‘nasty’ during the sessions. The difficulties mediation services face in engaging both parents have been noted previously (Walker et al. 2004). Some expressed regret at the delay this had caused to them in taking court action. Others in our sample had found mental health services or social work services to be supportive but unable to resolve their situation. Those who had sought individual advice from Citizens’ Advice Bureaux or the police said that they had been advised to seek legal advice. One father told us:
[CAB] told me I needed to go and see a solicitor … A cop actually took me into an interview room, sat me down and spoke to me for about an hour about it, and what he was telling me was, it’s really unfair and the only thing really that you can do at the end of it is go and see a solicitor.

One father mentioned having approached Families Need Fathers, and a mother we spoke to had found the emotional support of Women’s Aid invaluable in coping with loss of contact with her children.

3.25 Apart from these services, interviewees told us that the first place they had turned for help in addressing contact problems had been a solicitor. One father told us he preferred his solicitor over advice services since the solicitor was more ‘businesslike’. Solicitors were often referred to as a first port of call or the ‘only option’. This reflects previous findings about the use of family solicitors in the UK (Genn 1999; Genn and Paterson 2001) though a more recent study in England and Wales found that most of those with justiciable problems ancillary to divorce or relationship breakdown go first to an adviser other than a solicitor (Pleasence et al. 2003). Consulting a solicitor was seen as the only means of starting to address a severe, irresolvable problem:

I pleaded with my wife to seek mediation or some sort of meeting where we could discuss the situation, but my wife refused both. And the only option therefore available to me was to go to a solicitor, and that’s what I’ve done. (father)

3.26 Family members were often involved in the decision to seek a solicitor, with many fathers saying they had sought legal advice at the prompting of friends or family members:

... [the other parent’s] solicitor gave me a letter and basically, that was when my parents said that you need to get a solicitor, you need to find somebody that can obviously do this professionally, so it was more my parents that kind of guided me on that one. (father)

Some fathers said their own parents had come to initial meetings with solicitors, others that their parents were prepared to contribute financially to the cost of legal advice.

3.27 Not all pursuers found family solicitors who espouse a non-adversarial, child-centred approach. In one case, the pursuer was unhappy because the conveyancing solicitor he consulted had advised him that he should enjoy having no commitments to his children instead of seeking contact. Another approached his business solicitor, who recommended that he instruct a different solicitor who would be a match for the “rottweiler” acting for his child’s mother. Some interviewees had not been satisfied with the first solicitor they had approached, usually because the solicitor had been pessimistic or lukewarm about what legal action might achieve.
3.28 Pursuers initially wanted their solicitor to reassure them that they had a case to pursue, and to indicate whether legal action would be able to help them to achieve what they wanted. For some, this had led to their starting a court case immediately. One father remembered that

he [the solicitor] basically said that I shouldn’t be denied, you know, access to seeing my son … and he said, ‘Well, we’ll have to go to court for that.”

3.29 Parallel with the findings of a previous study of English family solicitors (McCarthy et al. 2007), solicitors had suggested mediation in a few cases, but most had first recommended writing to the other party. Non-resident parents described these letters as an appeal to discuss contact. The non-resident mother we spoke to, on the other hand, described the letter her solicitor sent as an ultimatum issued to her child’s father. These letters usually did not resolve or improve contact problems, although one or two interviewees noted a temporary positive effect. Several interviewees complained about the cost of these letters (one father told us he had spent £1,200 before lodging a writ), saying that in their view they had achieved nothing.

3.30 Solicitors in our survey felt that clients generally misunderstand the legal process when they first come to see them. Most solicitors pointed to a lack of knowledge, particularly about parental responsibility. They said that parents often see the previous behaviour of the other parent as highly relevant to their case, and need persuading that, unless there are serious issues such as violence, fault or blame is not relevant to the action. Solicitors stated that clients’ expectations of them as solicitors were also often unreasonable or misguided. Several made mention of clients wanting a ‘miracle’ or hoping that their solicitor would ‘wave a magic wand’. Clients’ expectations, according to solicitors, often centre on getting solicitors to fight their corner for what they want:

Most clients always expect to get their best position and don’t like to compromise – that’s why they end up in court in the first place! (solicitor)

3.31 The majority of solicitors were also concerned that clients in contact actions are often very emotional when they come to see them, more so than other clients they see. They often have to spend a long time with clients in getting to the bottom of their legal issues, while at the same time being sensitive to their needs. Clients often just wanted to talk about their personal problems, and 53 per cent of solicitors stated that very often they were looking for emotional support. It is notable in this regard that few clients had previously sought the help of a counsellor. Eighty-five per cent of solicitors stated that being a sensitive listener was an essential quality for a family solicitor dealing with contact cases.

3.32 Pursuers frequently said that they had ‘no option’ or ‘no choice’ but to book a writ. One father, for example, stated:
I was forced into it, you know, to take the action that I have. You know, I don’t regret it although it’s obviously not the ideal situation.

Court action was always presented as being the fault of the other party. Sometimes this was explicit: for example, one pursuer explained that his ex-partner had openly challenged him to take their dispute to court. More often, it was seen to arise because the other parent refused to engage in discussion or did not discuss issues reasonably. Going to court was universally referred to as a regrettable course of action for which the other party was responsible. Interviewees were at pains to demonstrate that they understood going to court to be a last resort and that they had tried all the alternatives first. It was not a step they took lightly, but they felt that they had no other choice.

3.33 Court action was often described as a battle. Pursuers told us that they would not ‘go down without a fight’, or would fight ‘tooth and nail’, or that the defender would have ‘everything thrown at her’ in court. Similar metaphors have been seen to be used by litigants in contact actions in Canada (Robson 2008). Going to court was spoken of as ‘evidence’ that, in the future, would demonstrate to children the lengths the pursuer had gone to for them, or alternatively would prove that the resident parent had disrupted contact. One father, for example, said that he wanted to be able to demonstrate to his child when he was sixteen that ‘your ma was a pure bitch’. Another pursuer told us:

*I think what I’ll gain from going through the court process [is that], whatever happens in the future, the kids are going to know that I’ve been through court to try and get them, that I never chose to walk away and abandon them.*

Expectations of court action

3.34 The outcome that was most commonly anticipated by survey respondents, applying to 90 per cent of cases, was that children would have more contact with them. In addition, over three-quarters of respondents indicated that they wanted an arrangement that was better for the children, as Figure 3.3 indicates. Fathers in our study were more likely than mothers to state that they were seeking greater reliability in their contact arrangements (58%, as against 22% of mothers).
3.35 Respondents also rated the importance of the outcomes they expected, and those which they rated as most important were:

- the children would have more contact with the pursuer (48% of respondents)
- the contact arrangement would be better for the children (37% of respondents)

Most pursuers thought that they would achieve their most important outcome (83%), but 17 per cent thought that they probably would not, even though they were taking court action.

3.36 During our interviews, pursuers expressed a number of similar goals in pursuing court action. The main expectation was that contact would be improved. A desire to see justice done, or an injustice recognised, was also prevalent in many interview accounts. Some fathers said they wanted to see their child’s mother being ‘told by a court of law’ not to disrupt contact and emphasised the importance of the court setting out contact arrangements ‘in black and white’. They believed that an agreement or order would not easily be flouted by the child’s resident parent. These expectations of court are consistent with findings in other jurisdictions (e.g. Smart and Neale 1999; Robson 2008). In some cases, fathers wanted parity with the other parent. One father, for instance, told us:
Well, there’s 52 weekends in a year – I want 26 for me, 26 for my ex-partner. School holidays, I want half for me, half for my ex-partner. Christmas, one with me, New Year with my ex, and vice versa the following year. I just want everything to be fair and equal. Because I want to play an active role in my little girl’s life.

3.37 Unmarried fathers told us that their solicitors had advised them not to expect parental responsibilities and rights (PRRs) to be awarded during court action in case this jeopardised securing an order or agreement about contact. However, some fathers had entered PRRs as a crave and were concerned that being denied them meant having little say in their child’s life. Some did not seem clear about whether parental rights were part of what they were trying to achieve, or what their significance was. One father, for instance, stated:

(Contact) will probably be eventually just one weekend every fortnight, I’ve been sort of told already from my solicitor. Declaration of paternity, well I mean, the test I did proves that I’m the father, but I suppose maybe the court – I don’t know, I’m just assuming they’ll say ... ‘Yeah, you’ve got rights and that, give you that as well’ – I’m not actually sure.

Another interviewee complained that his solicitor had not explained to him what part parental rights played in his action, but admitted he had not asked her about this.

3.38 Some parties described their solicitor having downplayed their expectations when the decision had been taken to lodge a writ. In particular, those who said they had wanted residence or joint residence of their children recalled being told there was little or no chance of this. One father seeking a residence order said he had been told he would have to prove that the mother was an unfit parent to achieve this. Others recalled being told that their having some contact already, or living with their parents, would count against them.

3.39 The interviewees we spoke to prior to their first court appearance were rather unsure of what it might be like. Some had hoped that the judicial process would swiftly resolve their contact problems. Others had been advised that court action might take longer than they had hoped (a year in one case). A few pursuers indicated that they did not know what the court procedure would be.

Respondents’ feelings when going to court about contact

3.40 Survey respondents had mixed feelings about going to court. Many pursuers felt they had no choice. The response selected by the largest number of pursuers was the feeling they had no other choice (42%). A third of pursuers (33%) wished they did not have to go to court, and many felt sad about it. Sizeable proportions, however, felt relieved (28%) and looked forward to the action (23%), perhaps in hope that issues would finally be resolved. Eighteen per cent of respondents felt angry about going to court.
3.41 Interviewees voiced concern about the risk of discrimination in the court process. Male pursuers frequently stated that it was common knowledge that the legal process favoured women over men. Nevertheless, some men had been motivated to pursue court action by hearing that fathers had more rights than previously thought and had a realistic chance of increasing their contact through court action. One mother in our sample, on the other hand, thought that the law would fail to prevent her husband from harassing her. Both men and women undertaking court action may anticipate bias against themselves on the basis of their gender. However, a non-resident mother in our sample felt that she had been discriminated against because she was a non-resident parent rather than because of her gender.

3.42 Pursuers were also concerned about who would hear their case. Some said that solicitors had cautioned them that the outcome of their hearing depended to a significant extent on which sheriff would hear the case, or that they had heard that some sheriffs were ‘less understanding’.

3.43 Going to court might be expected to be a stressful time, especially if it is about children. So that we could assess this, we invited all survey respondents to complete the 12-item version of the General Health Questionnaire, which, while not a diagnostic tool, has been well validated as a means of identifying the existence of stress and mental distress (Goldberg et al. 1997; Hu et al. 2007). The GHQ was coded bi-modally (i.e. with scores of 0 or 1 for each response), producing a wellness score of up to 12, with 12 indicating severe mental distress. We used a cut-off point of 4 or below to indicate healthy functioning. Using this coding system, we judged 34 per cent of pursuers with contact issues to be showing signs of severe mental distress, a further 20 per cent to be showing signs of moderate distress, and 46 per cent to be showing few, or no, signs of stress/distress, at the time they started court action. These levels were significantly higher than those indicated by divorcing parents with no contact issues, 79 per cent of whom showed no signs of stress, leading us to conclude that those parents involved in contact cases show significantly more signs of stress than those whose cases involved only divorce, as Table 3.3 demonstrates.

<table>
<thead>
<tr>
<th>Table 3.3 Signs of stress shown by pursuers (GHQ scores)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level of stress</td>
</tr>
<tr>
<td>No signs (0–2)</td>
</tr>
<tr>
<td>Few signs (3–4)</td>
</tr>
<tr>
<td>Moderate signs (5–8)</td>
</tr>
<tr>
<td>High levels (9–12)</td>
</tr>
<tr>
<td>Total 100% (N)</td>
</tr>
</tbody>
</table>

3.44 Among pursuers with contact issues, stress levels were also correlated with the quality of communication between parents. Those parents scoring more than four (showing at least moderate signs of distress) were significantly more likely than those with low scores to state that they had poor or nonexistent communication with the child’s other parent (64%, as against 36% of those with lower scores). This difference was not seen among divorcing parents with...
no contact issues. Levels of stress were not correlated with the amount or type of contact parents had had with their children over the previous month, gender, the reasons given for starting court action, or the outcomes expected from the court case.

Summary

3.45 In this chapter we have described how pursuers come to start child contact cases. We have seen that the reasons pursuers gave for going to court are many and varied, but that cases are characterised by severe problems that are seemingly irresolvable. We have also considered the expectations and feelings of pursuers about an impending action. The key findings from this chapter are:

1. Contact actions are usually undertaken to alter contact that is taking place rather than to establish contact. Only 30 per cent of pursuers with contact issues had had no contact with their child or children at the start of an action.

2. Differences are apparent between those pursuing divorce and those pursuing contact as primary craves in contact actions. The latter are significantly more likely to report no contact with the child in the case. Parents pursuing contact as a primary crave report significantly poorer communication with the other parent than do those pursuing divorce, and higher levels of stress.

3. Non-resident pursuers describe significant feelings of distress or loss arising from their contact problems. They typically feel controlled by the defender.

4. Contact actions take place against a background of difficulties in communication between parents, or between parents and grandparents. Pursuers describe having been forced into taking action by the other party’s refusal or inability to communicate.

5. Concerns regarding children’s well-being or safety were described in the context of allegations and counter-allegations between parties, but pursuers did not usually seek specific solutions to these issues through contact actions.

6. Qualitative evidence suggests that the concerns of male and female non-resident parents are similar, but distinct from those of resident parents.

7. Solicitors had been a first port of call for help for those pursuing contact actions, often following advice from their family. Few pursuers had sought help or advice from other services.

8. According to solicitors, many clients in contact cases lack understanding of the scope and purpose of legal process or harbour unrealistic expectations. Solicitors also state that clients are likely to be suffering emotional distress or to be unaware of the need to substantiate allegations regarding child welfare.

9. Pursuers primarily sought increased contact or a better arrangement for the children through the court action. They expressed a wish to see justice done, or to achieve parity in the allocation of contact. They often described court action in terms of a fight, and some wanted to be able in
the future to provide their children with evidence that they had been prepared to take legal action.

10. Although most pursuers anticipated a successful outcome to their court action, 17 per cent did not. Some expressed concern about possible gender discrimination or differences in approach between sheriffs adversely affecting their case.

11. More than half of our survey sample reported experiencing moderate or severe stress as they undertook the contact action. This was most severe for those who had the poorest communication with the other party. Solicitors often had to deal with emotionally distressed clients.

Once a child contact crave is lodged in a sheriff court and a notice to defend given, a CWH will be arranged. A CWH is the primary means for hearing child contact cases in Scottish courts, and attending one is often the next step that parties take in the court process. The following chapter describes CWHs and the views about them held by court staff and parties.
4 CHILD WELFARE HEARINGS IN ACTION

4.1 In the previous chapter we described why contact disputes come to court to be resolved. When such cases reach court in Scotland, they are usually heard in child welfare hearings. The CWH was introduced in order to support parties in resolving their disputes, and to encourage the maintenance of the general welfare of the child. The CWH represents a critical step in the process of reaching a solution in child contact cases, and so is a key focus of this research.

4.2 In this chapter, we describe how child contact actions enter and progress through the court system. CWHs are at the heart of the Scottish court procedure for actions in respect of child contact. By the time pursuers had completed our follow-up survey, for instance, all but two of them had attended a CWH. Most commonly, pursuers had attended between two and four hearings, but there were instances of people attending up to twelve. In this chapter we discuss CWHs and how they are experienced by pursuers and legal professionals. We examine:

1. The perceptions of court staff regarding CWHs.
2. How CWHs operate as an informal forum for negotiation.
3. How sheriffs interact with parties in CWHs.
4. How parties have their say in CWHs.
5. Tensions arising in dialogue between sheriffs and parties.
6. Pursuers’ views about the use of repeated CWHs.

We draw on observations conducted at the case study courts, interviews with pursuers conducted after they had been to court, the survey of pursuers, and interviews with sheriffs and sheriff clerks.

Perceptions of court staff

4.3 Sheriffs and sheriff clerks were all positive about CWHs as an instrument for dealing with contact cases, although one sheriff had formed this view after initially having regarded them as a ‘nuisance’. They generally saw CWHs as:

• providing an informal forum for resolving arguments and removing sticking points
• enabling sheriffs to address parties directly and ask for their proposed solutions
• offering parents a chance to have their voices heard
• allowing measures to be tried out and reviewed in a process of incremental change

4.4 In interacting with parties at a series of CWHs, sheriffs felt that they could oversee the gradual reintroduction of contact between pursuers and children, with regular updates on how each was coping. Because of this, some sheriff clerks were of the opinion that CWHs tended to result in relatively long family actions. The initial CWH allowed sheriffs to start engaging with the essentials of a case at an early stage of proceedings, and they considered that
procedure at CWHs was more likely to generate agreed and sustainable solutions to contact problems:

    I try to make them think they’re going to be parents all their lives, so they have to learn to communicate. (sheriff)

4.5 Sheriffs saw CWHs as an opportunity to reason with parents, in some cases ‘robustly’, and to try to get them to overcome arguments and ‘silly’ behaviour. Most sheriff clerks thought the hearings gave sheriffs an important opportunity to remonstrate with parties or ‘put a bit of fear’ into them:

    … at the end of the day, when the parents are sitting close to each other the sheriff can bang their heads together. I mean, sheriffs threaten sometimes and say ‘You aren’t being responsible parents the way you are arguing’. (sheriff clerk)

4.6 In the remainder of this chapter, we consider how our observations, and the accounts of pursuers, reflect these perceptions of the CWH as an informal and recurrent forum within which sheriffs can address, remonstrate with and listen to parties. We also, on the basis of our observations, offer a description of what happens at a CWH.

**Outside the courtroom**

4.7 The CWH is usually characterised as an informal occasion. During our observations, we looked for signs of this informality, both outside the courtroom and during the hearing. All the courts in which we conducted observations provided a dedicated day or days in the court schedule for dealing with family actions, allowing one room to be used as a closed court. Nevertheless, court buildings were sometimes not conducive to an informal environment. Parties in family actions tended to wait in the corridor outside the courtroom rather than in the waiting rooms. In the bigger courts, this meant their mingling with parties in criminal cases being heard in other rooms. In addition, the two largest courts have security measures, such as entry barriers and officers in body armour, that are very visible.

4.8 Court corridors began to fill up during the twenty minutes prior to the start of a session of hearings. Parties arrived dressed with differing degrees of formality, often appearing nervous, anxious, agitated or tearful. It did not seem, from their appearance and behaviour, that they anticipated an informal event. The initial CWH represented the first time many of the pursuers we interviewed had been to court. They described a sense of dread leading up to going, and expected court to be a ‘frightening’ or ‘nerve-wracking’ place. One pursuer had been daunted at the thought of attending a hearing on his own in a court far from where he lived, but had refused his brother’s offer to accompany him because he had been concerned at how he might react:

    … it was a terrible time, and I didn’t know how things would go, and I didn’t want him [his brother] to see. I didn’t know if I was gonna get upset or what … so I didn’t want people to be about me.
4.9 When solicitors arrived at the courts, they usually began talking to their client in the corridor or waiting room, at a distance from others. A sheriff clerk indicated that this initial period of discussion could be an important step in the process, which might mean the hearing was no longer needed:

\[\ldots \text{they [solicitors] need to speak to the other party, they need to speak to their clients and they need to tell us, is it going to be contentious, is it just going to be continued, is it settled? And you're still trying to get the sheriff on the bench for quarter-to, as well. So sometimes the ten minutes before the sheriff is due on the bench is quite hectic.}\]

4.10 Most pursuers we interviewed confirmed this, saying they had met their solicitor to discuss or revise the case just before the hearing. Some had found the area outside the courtroom an intimidating place for such discussions, with no privacy, and people looking daggers at each other. One father had felt that this encounter was important since it was the first time he had met the local agent acting on behalf of his own solicitor. He recalled having ‘spent a fortune’ to make himself presentable so that the agent could see that he wasn’t ‘a junkie or anything like that’. Interviewees also described negotiations that were conducted outside the courtroom between themselves and the other party through their respective solicitors, in some cases reaching an agreement. One father had agreed to a deal in this way before the hearing had been called, because his solicitor had advised him that the sheriff hearing his case that day would be unlikely to award the hours of contact he sought.

4.11 Some interviewees were happy with the wait outside the courtroom, and the majority of pursuers in our survey (81%) told us that they had felt prepared for their first CWH and that their solicitor had talked to them about what to expect. Others we interviewed were not satisfied with the brinksmanship and what one interviewee called the ‘furious whispering’ of negotiations outside the courtroom. These participants told us they were uncomfortable with their agent dealing directly with a solicitor they viewed as antagonistic, a champion for the other party or an ‘enemy’, as one father put it. Several interviewees reported that solicitors had subsequently, in the courtroom, announced agreements, which they were not aware of, or did not entirely feel party to. One father, for instance, commented:

\[\ldots \text{where three came from I don’t know. We went into court and it was basically a case of her solicitor turned round and said ‘Oh yeah, we’ve agreed three hours outside’. Oh well, bully for you! – it’s not what I agreed at all, mate.}\]

4.12 We saw waiting rooms and corridors being used by solicitors to debrief their clients after hearings. The area outside court sometimes also served as a place where parties vented frustration or tension after they left the courtroom, sometimes at each other.
Inside the courtroom

4.13 The hearings we observed concerned contact, divorce, residence and parental rights and responsibilities, and included three cases where the father was the resident parent of one or all of the children involved in the action. In a few cases, parental mental health or substance abuse issues were among the concerns discussed. No children were present at any of the hearings we observed, apart from an infant brought to court by a mother who had been unable to find childcare. While the ages of the children in the cases were not always mentioned during the courtroom discussion, most were under twelve. The majority of hearings reported by pursuers in our follow-up survey were relatively short, between fifteen and thirty minutes, and our observations confirmed this.

4.14 We noted differing degrees of formality in the courtrooms we visited. In the three largest courts, the CWHs took place in rooms with several rows of seating facing the bench and a table perpendicular to the bench. The parties, agents and sheriff clerk sat at this table. In the smallest court, CWHs took place in the sheriff's chambers or the jury room, a place which court staff thought was more appropriate and where the sheriff could sit at the same level as the parties, creating less of a barrier. In one court, all the solicitors bowed to the sheriff as they entered or left the courtroom. Some sheriffs were gowned and wigged, while others were not.

4.15 Most of the hearings we observed occurred subsequent to a prior CWH in the action. If a sheriff had presided at the case during previous hearings, this was immediately apparent from the greetings as parties entered (e.g. 'It's been a while since I've seen you') and the recollection by solicitors and sheriff of aspects of the case's history. All the sheriffs we observed in hearings were male. Hearings began with the sheriff inviting the solicitors to speak in turn, summarising what had occurred prior to the hearing and what action was sought. The sheriff asked questions as necessary of either solicitor or party. Parties tended to wait until they were questioned or asked to supply information, rather than taking a more active part. A few did not speak at all during the hearing, only nodding or shaking their head. As the hearing progressed, exchanges became more interactive. Sheriffs directed the discussion by cutting off lines of argument put forward by a party or solicitor, questioning arguments made by a solicitor or inviting a solicitor or party to respond to an issue raised. Eventually, the sheriff summarised his point of view and stated any decisions, orders or actions to be recorded by the sheriff clerk.

4.16 Parties to the case appeared nervous, but usually smiled during the hearings. Proceedings were characteristically friendly and courteous, with sheriffs introducing themselves prior to the start of the hearing and directing reassuring looks at the parties throughout. This tone of reassurance extended on occasion to shared laughter. Sheriffs routinely employed everyday figures of speech rather than legal language when discussing the implications of the action for family relations, using phrases such as ‘a wee girl and her daddy’, or ‘huge love and strong feelings’. There were few obvious signs of adversarial argument or of parents trying to score points over
each other, but an apparent effort on the part of all concerned to avoid any sense that one party might win and the other lose. There was, however, little eye contact and no communication between parents, and all comments were addressed to the sheriff, or by the sheriff to others in the room. There were occasional outbursts of indignation from some of the parties, usually cut short by the sheriff as their solicitor tried to calm them.

4.17 Outside the court after the hearing, some parties appeared extremely emotional. It may be that the silence of some parents masked an internal struggle on their part to maintain a positive demeanour throughout the hearing. Some interviewees told us that after the hearing they had felt deflated, or as if everything had happened in too much of a rush. One man, for instance, said:

You’re apprehensive, you don’t know how it’s going to turn out until after you come to walk away and say ‘Well, is that what it was all about? I’ve got no further on.’

4.18 In this section, we have considered the degree of informality involved in CWHs and the extent to which they provide an inclusive context for discussing a case. In short, the formality of court buildings and uncertainty over what was to come may have unsettled pursuers arriving at court, many of whom described approaching their hearing with some trepidation. Separated parents in Scotland tend to regard courts as likely to have a negative impact on family circumstances (Marryat et al. 2009), and it has been noted that in other jurisdictions also separated parents see going to court as ‘scary’ (Robson 2008). Last-minute negotiations outside the courtroom were seen as important by sheriff clerks and some pursuers, but were a source of some dissatisfaction for others. Inside the court, a reassuring tone from sheriffs, the use of conversational rather than legal vocabulary and, in some courts, the use of small chambers and the avoidance of gowns and wigs all served to make CWHs less formal and intimidating events. Parties played a largely passive role during CWHs.

Sheriffs’ interaction with parties

4.19 Since parties are required to attend CWHs, these hearings offer sheriffs the opportunity to address or question parents directly. Although sheriffs in the hearings we observed tended to speak more often to solicitors, they also spoke to parties. Some of these interactions took the form of questions aimed at confirming why a crave had been sought or establishing why an incident had occurred. At other times, sheriffs stated their point of view, in, for instance, delivering a caution or reproof or explaining why they were asking a question. These interactions were usually conducted in a conversational tone. One defender and her solicitor, for example, were asked by a sheriff:

Is there another man on the horizon? Forgive me for asking but I have to be blunt.

4.20 In a few instances, sheriffs had to contain reproachful outbursts. When one mother stood up to deliver a tearful reaction to a sheriff’s decision not to
award the contact she sought, the sheriff addressed her directly to say ‘You’re being confrontational’. Continuing to talk to her in conversational language, he urged her to focus on ‘the long-term view’, work in collaboration with the father (with whom the child resided) and recognise the child’s needs and interests even if these were incompatible with the contact she had hoped for.

4.21 Not all interviewees had attended CWHs by the time of their second interview, since some actions had been dropped or sisted before the initial hearing had been reached. Of those who attended CWHs, some of those whom we interviewed a second time told us that the sheriff had not said anything to them, or had only asked them to supply details or give a yes/no answer. These individuals had formed the impression that the sheriff was uninterested in their case, ‘condescending’, or ‘arrogant’. One of them felt he was supposed to be ‘seen and not heard’, and that the sheriff was ‘speaking at’ those in the room and not listening to him.

4.22 Some participants at CWHs keenly recalled the sheriff remonstrating with the other party or demanding to know why they had been uncooperative. Most participants themselves felt strongly positive about the sheriff having spoken to them. One father said of the sheriff in his hearing:

... he dealt with everything, rather than being arrogant and above himself, kind of thing ... he didn't go through my solicitor, he spoke to me.

4.23 Pursuers who had been spoken to by sheriffs felt that the sheriff had explained their views well and understood the situation, even if their decision had not been what they had hoped for. One father described feeling sustained through a long series of CWHs by the sheriff telling him at the initial hearing that he would, in the fullness of time, gain contact with his son. Another regarded what the sheriff had said to him and his child’s mother as a key factor in the agreement of contact arrangements between them:

... the judge summed up the case and says, congratulations on us both talking, and at the end of the day as parents we'll be connected the rest of our life through [our son], you see, so it's really important for us to really get on.

While we did not observe sheriffs speaking directly to parties during CWHs very often, pursuers’ accounts suggest that their doing so may have a positive impact on parties’ acceptance of the decisions reached at the hearing.

How parties have their say

4.24 Sheriffs and sheriff clerks told us that CWHs were beneficial in giving parents an opportunity to have their say. As we noted above, however, the contribution of parties to the hearings we observed was minimal. Pursuers’ accounts and survey responses suggest that their experiences and opinions regarding this varied. We go on to explore the views of those who spoke in their hearings and those who did not, and examine the reasons pursuers gave for not contributing in court.
4.25 Interviewees generally described having taken very little part in proceedings when they had got inside the courtroom, and remembered that hearings had been over very quickly. Although most of those who had been anxious as the hearing approached had felt relieved, reassured or more confident during or after the hearing, some described the experience of appearing in public in order to see their own children as ‘strange’ or said that they had felt like a criminal, and others did not think they had fully understood what was going on. One man told us:

I didn’t know what they were talking about really ... they was coming out with all these big words and all that, and I’d never heard them and I was like ‘What does this mean?’.

4.26 One interviewee recalled the anxiety he had felt while waiting to see if something would be ‘sprung’ by the other party, while another described the ‘white heat’ of the court as constituting a ‘blaze of anger’. These accounts are supported by our survey results: 70 per cent of pursuers indicated that they had felt nervous at the first CWH, and only one individual told us they had felt relaxed. Thirty-seven per cent said they had felt intimidated at the hearing. It might be hypothesised that participants in the grip of intense emotions may not have felt capable of making meaningful contributions to the discussion, particularly given the importance some interviewees attached to appearing presentable, reasonable and compliant in court. One interviewee’s solicitor, for instance, had warned him not to sigh or tut in front of the sheriff.

4.27 Not all pursuers may have wished to have their say at a CWH, however. Some interviewees told us they had been happy to communicate with their solicitor during the hearing, in one case by covert kicks and eye contact, and let their solicitor speak for them. One interviewee had been advised by his solicitor about how to speak in court if he decided to but had not felt it necessary to do so, and another saw his role as demonstrating his self-control to the sheriff:

I sit there in court, I don’t argue with the guy [sheriff], I don’t impose myself, I don’t have disrespect for him, and I think he picked up all this from me.

4.28 Other participants had thought that they were not allowed or supposed to take an active part in proceedings. Many interviewees said that they had been specifically instructed by their solicitors not to speak at the hearing, or had been advised only to speak if asked a question. That parties should not contribute to the hearings was often stated as being common knowledge – ‘you don’t get to speak’, as one father put it. Another pursuer recalled that the sheriff had not looked at him. Several of these interviewees expressed regret at having left things entirely to their solicitor when they had been in the courtroom, or were aggrieved that they had not had an opportunity to answer questions. A substantial minority of interviewees told us they had wanted to have their say during their CWHs, but had not done so. They were resentful at having been denied an active part, or felt that their having been present had been a waste of time. One grandmother, for instance, stated:
When you’ve got a welfare hearing I think you should have a right to talk. But you don’t, and that isn’t right. It’s just suddenly somebody’s come into your life, all these people, and just said to you, ‘No … you’re no’ getting him [the child] home.’

4.29 One man was disappointed that his solicitor had told him not to contribute to the hearing from his own research on parental alienation syndrome. Another said that he had been advised by his solicitor not to describe the actions of his ex-partner in court, on the grounds that ‘the judge isn’t interested in tittle-tattle’. The interviewee was concerned that this meant that issues he had regarded as making up ‘ninety per cent of the problem’ had not been brought up and, therefore, had not been addressed.

4.30 Half of our survey respondents indicated that they had spoken during a CWH. Some interviewees said they had tried to contribute to the courtroom discussion at points where they had believed that the sheriff was hearing only half the story, or that lies were being told, but had found that they had been silenced, in one case by being threatened with removal from the court. One father told us:

I tried, but the sheriff put me down, sort of looked at me as if, you know, I shouldn’t be speaking … He spoke to my solicitor and to my wife’s solicitor. And he asked no questions when I interjected. But I wasn’t familiar with the protocol that they expected. I just thought they virtually ignored me.

4.31 In the survey, 57 per cent of pursuers felt that their views had been taken into account. A small number of interviewees told us that they had said something, or had engaged in dialogue with the sheriff, at one or more CWHs and felt that they had been listened to. They had been aware, as they spoke to the sheriff, that their solicitors had warned them not to speak, but felt that their interruptions had been worthwhile and that the sheriff had acknowledged and received their contribution with interest. One father told us:

I had a direct one-on-one conversation with the sheriff. He was very compassionate and understanding of the situation because he realised it was emotional for me … and I was very pleased with the outcome.

Some pursuers expressed an overall sense of disempowerment at the CWH, telling us that they had been ‘completely detached from what’s really happening’, had been ‘a wee bit lost’ or had been ‘treated like furniture’ in court. Nevertheless, they each affirmed that their decision to speak to the

---

10 Parental alienation syndrome was proposed by Richard Gardner in non-peer-reviewed publications as a diagnosable syndrome whereby a child is ‘brainwashed’ by one parent into rejecting the other. It is rejected by many authors on the grounds that central concepts can only be subjectively defined, that the child’s expressed views are held to be unreliable, and that it represents a ‘medicalisation’ of behaviour which may be used to mask an abusive relationship. See e.g. Bruch 2001, Blank and Ney 2006, Clarkson and Clarkson 2007, Fidler and Bala 2010.
sheriff had been a key moment of the hearing. Although they had not been sure what the outcome of their interruption would be, they felt they had made an impact.

4.32 In summary, some interviewees had not been concerned about whether they had been able to speak at their CWH. Others had felt that they should not or could not contribute to proceedings, and were generally resentful about this. Those who had felt bound not to speak may have seen this in terms of antipathy towards them on the part of the court. Those who had tried to contribute and who had felt that they had been listened to, however, were positive about having contributed, even if they were not sure about the impact their contribution had made. These accounts are consistent with the views of sheriffs, who considered that a difficult shrieval decision might be more easily accepted by a disappointed party who felt that they had been listened to. One sheriff stated:

_I think it goes down better if they hear me saying to them ‘Look, I’ve listened to you, but this is why I made the decision’._

**Tensions in communication during CWHs**

4.33 The advantages of a court system that involves the parties in negotiations when dealing with contact have been argued in relation to other jurisdictions (McIntosh et al. 2008). In the preceding sections we have noted that legal professionals described the opportunity afforded parents to have their say as one of the advantages of CWHs, but also that some interviewees were not able to contribute. Sheriffs recognised the potential for dialogue between parties and themselves as being a key difference between CWHs and other hearings, allowing them to gather valuable information directly from parents. One sheriff thought that parents had a right to be consulted directly about problems relating to their child, emphasising that he would expect this himself if he were a party in a court action over contact.

4.34 However, the outbursts of indignation observed during some hearings highlight a tension in the sheriff’s role at a CWH between engaging parents in discussion and maintaining the authority of the court. Unsolicited contributions, in particular, were acknowledged by sheriff clerks and sheriffs as difficult to handle, with one sheriff clerk noting that:

_you don’t really want to start getting your court officer to start telling them to sit down and shut up, ‘cos you want them to be open and honest._

4.35 Sheriffs and sheriff clerks described the sheriff’s role as requiring the sheriff to assess the relationship between parties and tailor their approach to the hearing accordingly. One sheriff told us that, if parents were ‘looking daggers’ at each other, he was likely to make an order. The contributions made by parties at CWHs may, then, be regarded as beneficial in principle, but potentially difficult to accommodate in a way that empowers the parties.
CWHs as a process not an event

4.36 As was noted above, that CWHs should continue to monitor contact arrangements or amendments was seen as an advantage by sheriffs and sheriff clerks. They felt it offered a process within which disputes could be resolved without proceeding further to proof. At the end of most of the hearings we observed, a date was set for another CWH, to review new measures that had been decided on or the continuation of existing contact arrangements. The median number of CWHs per case recorded on the CMS was 2, with a range from 0 to 12. In 49 per cent of cases there had been three or more CWHs, and in 21 per cent there had been six or more (Figure 4.1).

4.37 In interviews, pursuers often referred to CWHs in terms of a process of trial and error, one describing them as ‘stepping stones’. Some pursuers appeared to feel lost in a cycle of hearings. One father, for instance, stated:

... there’s been that many of them [hearings] and half of them are just blurring into each other because every one seems to be the same … So we’re sort of going backwards and forwards all these times just to say ‘OK, overnight contact’, and then ‘All right, we’ll think about it’.

As such comments indicate, many pursuers were concerned about an apparently open-ended sequence of hearings. They were uncertain as to how the case would proceed, and were worried that contact granted at one hearing could be suspended at the next for reasons they could not predict. For some, this concern was compounded by rising costs, and by the worry that their child was, in the meantime, losing out on contact with them. One father, for example, was concerned at the court’s determination to ‘try every angle’ while his child had not seen him for nine months, and felt that there should have been a prompt mandate from the court for the parents to attend mediation.
Fathers in our interview sample often said that they understood that CWHs had continued so that the sheriff could assess their abilities or performance as parents. One said he had been given ‘six weeks to prove I’m capable’, another that the court was waiting to see if his son was ‘all right’ with him. Some fathers accepted this as being the way the court dealt with contact disputes, but others expressed some resentment at this process. They did not see why they were required to have their parenting abilities or performance vetted in this way, or else they found the criteria for the court’s approval of their parenting arbitrary or unclear. One interviewee, for instance, told us that he had reluctantly allowed his contact to be supervised by a nurse ‘just for the sake of seeing my child’, but had become aggrieved that the decision about whether to increase contact had been deferred at the subsequent hearing, apparently at the convenience of the child’s mother:

…the sheriff told me I was so close to getting my child, but because she [the child’s mother] said she was blooming well moving house and a few other little things, he said ‘Just go along with the Sunday afternoon visits until next time’…
Summary

4.39 In this chapter, we have identified some of the advantages of CWHs perceived by legal professionals and considered how pursuers view them. The key findings from this chapter are:

1. Sheriffs and sheriff clerks endorsed CWHs as:
   (a) providing informal forums for resolution;
   (b) allowing sheriffs to address parents directly;
   (c) allowing the voice of parents to be heard;
   (d) enabling a process of incremental change through testing and reviewing options.
2. CWHs were observed to be relatively informal and reassuring for parties, although some aspects of the court environment could be daunting for parties.
3. Most pursuers (81%) felt prepared for attending a CWH, but 70 per cent were nervous during the hearings, and 37 per cent felt intimidated.
4. Sheriffs addressed themselves to parties in CWHs only to a minimal extent. Pursuers who reported that the sheriff had spoken directly to them and explained their view said that this had had a strong positive impact, even if they had disagreed with that view.
5. Half of the pursuers did not speak during their CWH. This may have been because they did not want to, because they felt they were not supposed to, or because their solicitor had instructed them not to. Some felt aggrieved or ignored, or thought that the court had not gained a full picture.
6. Fifty-seven per cent of pursuers who spoke during their hearing felt that their views had been taken into account. Pursuers who felt that they had been listened to in the CWH saw this as extremely positive.
7. Dialogue between sheriffs and parties during CWHs can create tensions in cases where parental contributions create disruption or diverge from the focus on children’s interests, requiring sheriffs to impose authority.
8. Pursuers expressed dissatisfaction with the apparent unpredictability and cost of an open-ended sequence of CWHs, and with the delay to resolution that they involved. They perceived a need to play along with repeated CWHs, but some fathers resented the apparent assumption in some hearings that their parenting needed to be monitored.

CWHs are intended to promote a lasting solution to contact issues through an inclusive process of negotiation. In the next chapter, we discuss how legal professionals and pursuers approached the task of resolving contact actions within the framework of CWHs.
5 REDUCING CONFLICT AND REACHING AGREEMENT

5.1 In the previous chapters, we described how pursuers decide to take court action, and the first steps they typically adopt in the process of reaching a solution. We have identified non-adversarial approaches as a key principle of the Scottish system, both in the literature and in the views of sheriffs, and we turn now to identify the ways in which cases can be resolved or concluded and the ways in which all those involved in an action seek to:

- avoid antagonistic approaches
- if possible, reach agreement without imposing an order
- make use of support services

After describing how actions in respect of contact may be resolved or concluded, we examine how each of these objectives is addressed or taken up by sheriffs, solicitors and pursuers.

Ending a contact action

5.2 We noted in Chapter 4 that some pursuers were uncertain as to when or how their action would end. There are a number of possible ways in which a case may be considered to have ended or to have been resolved:

1. A case may be resolved at any stage through a joint minute (an application to the court signed by both agents and possibly by the parties). The reasons for this agreement do not have to be supplied, and the joint minute may simply state that the case is dismissed, or may award contact.

2. Where parties cannot agree to a joint minute, the sheriff can issue a final interlocutor making an order based on a joint minute or authorising a joint minute.

3. A case may be dismissed, either because neither party requires an order or because the party seeking the order decides not to take it any further. If a solicitor ceases receiving instructions from a client, and the client does not indicate on a court-appointed date that they wish to continue the case, the other party can apply for dismissal.

4. A sist can put a case on hold for months or years and thus mean the de facto end of a case.

If a case is not resolved in one of these ways during CWHs, it will proceed to an options hearing, at which the sheriff will identify the outstanding issues and consider the options for reaching a resolution. These are:

- sisting or continuing the case (e.g. by setting a further CWH)
- referring the parties to mediation or another service (not mandatory)
- fixing a debate hearing (in practice, this rarely happens in family actions)
- fixing a proof hearing

The outcome of any proof hearing will be a final interlocutor from the sheriff making an order in respect of the child or children in the case.
5.3 The CMS data indicated the frequencies respective of each of these possible end-points, and how long cases took to reach a conclusion. Table 5.1 shows that, over an 18-month period, 40 per cent of cases were disposed or dismissed, while 60 per cent were still registered as active, including 21 per cent indicated as having been sisted.

### Table 5.1 Status of cases after 18 months

<table>
<thead>
<tr>
<th>Status</th>
<th>% of cases</th>
<th>Number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Final disposal or dismissal</td>
<td>40.1</td>
<td>73</td>
</tr>
<tr>
<td>Sisted</td>
<td>20.9</td>
<td>38</td>
</tr>
<tr>
<td>Active but not sisted</td>
<td>39.0</td>
<td>71</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
<td><strong>182</strong></td>
</tr>
</tbody>
</table>

Relatively few cases proceed to proof. Eight of the 182 cases presented on the CMS had done so. Fixing a proof hearing may in itself create pressure on parties to resolve matters.

### Dealing with antagonistic approaches

5.4 We noted in Chapter 4 that sheriffs aimed to minimise conflict between parties during CWHs, and, in Chapter 3, that some pursuers saw their forthcoming court action in terms of a fight with the defender. While actions were ongoing, interviewees regularly talked about an adversarial rather than a conciliatory approach to the case – for instance describing the sheriff as supporting one or the other side in a CWH, or describing the tactics they were adopting in a struggle against the other party. One father, for example, suggested that he was looking to the sheriff to make an order so that his child’s mother could be ‘told’ what to do or else be made to comply with the order, rather than to facilitate mutual discussions between the two parents.

5.5 Pursuers, in describing their actions, often told us that they recognised the need to co-operate, but said that this was impossible given the nature, or the behaviour, of the other party. The father quoted above, for instance, acknowledged that it was important that all parties were ‘honest’ in the dispute, but felt that the defender in his case was committed to ‘alienating’ him. We also noted in Chapter 3 that some pursuers regarded allegations by the defender of violence, threatening behaviour or debilitating mental health problems as a smear tactic, but also that solicitors had advised that any such allegations would have to be substantiated in order for them to have any bearing on the case. Nevertheless, many pursuers said they had felt under suspicion while they had been in court, or thought that court decisions or orders reflected feelings of mistrust towards them. One father, for instance, said:

*I had thirteen weeks of a nurse watching me for an hour on a Wednesday and Friday morning … the one thing, as a single father, that annoys me more than anything is, what allegation has been made about me for them to be here?*

5.6 Perceptions such as these are likely to have been an obstacle to co-operation between parties. However, allegations of unacceptable behaviour were not
allowed to feature predominantly in the hearings we observed. The sheriffs’ focus was firmly on the children, and the behaviour of parents was not usually seen as relevant to the action, unless the behaviour was proven and might have a negative impact upon the welfare of the child. Sheriffs recognised the prevalence of antagonistic attitudes, one of them describing the typical attitude of pursuers entering into court action as being confrontational:

\[
\text{The starting point is and was the classic role of litigation – I am an aggrieved party, I’ve come to court seeking a remedy, the other side don’t want to give me that remedy, therefore we join battle.}
\]

5.7 During CWHs, sheriffs demonstrated their resistance to antagonistic behaviour when interacting with parties. On several occasions they cut short the contributions of one party whose intent appeared to be to criticise the other party. Sheriffs often emphasised common goals for all those in the courtroom, for instance using the first-person plural when suggesting to a father that the help and involvement of the child’s mother was ‘something we want’. Such an approach supports the non-adversarial ethos of the court, although, as we noted in Chapter 1, it has been argued that the legitimate concerns of one or the other party in a contact action may be stifled by an insistence on mutually agreed solutions in court (Kelly 2003; Friedman 2004).

5.8 In interviews, sheriffs also stressed how important it was for solicitors to prepare their clients and work with the courts to reduce conflict. We observed solicitors acting swiftly during CWHs to contain any outbursts from their clients, appearing to reassure them in whispers. In the survey, solicitors described their role as one of encouraging parents to see things objectively in terms of what is best for the child rather than focusing on problems or issues with their ex-partner. Some interviewees remembered their solicitors impressing on them the need to think co-operatively, or at least to appear to be doing so. One pursuer recalled his solicitor telling him not to ‘throw mud’ at his ex-partner in court in the following terms:

\[
\text{Well, what happens if you start doing that, and then she starts throwing mud back? She [the solicitor] went, ‘All that’ll happen is, the sheriff will just turn round and say “Look, this is not good. I’m not even gonna let this child see his dad.”’ She says, ‘You’re gonna get punished … because they’ll not think it’s a good environment for the baby if the two of you can’t talk.’}
\]

Pursuers also recalled that their solicitors had advised them about how to behave in non-provocative ways on contact visits, for instance stressing that they should not allow the personal opinions of the defender to determine how they behaved or reacted, or that they should not go near the defender’s house in order to reason with them.

Reaching agreement and avoiding orders

5.9 Both sheriffs and solicitors said that an important part of their role in contact actions was to find a workable solution to contact disputes and sell it to the
parties. One sheriff told us that a good outcome in a contact action would be to secure an agreement between the parties, or to make an order based on an agreed solution. Sheriffs said that they depended on solicitors to broker negotiated agreements when possible. One suggested that the sheriff’s viewing of consensus as important is helpful to solicitors, allowing them to encourage their clients to compromise by pointing out that the sheriff will not allow an adversarial approach. Another sheriff told us that he found it helpful to talk with solicitors before a hearing to see if an agreement could be reached without the hearing going ahead.

5.10 Solicitors in our survey recognised the need to help clients to be ‘realistic’, understand that they might not get what they want, and seek compromise. Seventy per cent of solicitors indicated that they ‘very often’ encouraged a more conciliatory approach, the remainder stating that they ‘sometimes’ encourage this. Fifty-eight per cent of solicitors indicated that they ‘very often’ encourage clients to accept a compromise, the remainder stating that they ‘sometimes’ do this. Respondents often defined a good outcome as one which works in the best interests of the child, one which might not always suit their client but which would be one they could live with.

5.11 Pursuers had little to say about the strategy their solicitors adopted in hearings. During the court action they had taken a passive role, watching to see what the solicitor did or achieved, and were sometimes unsure of how the case had been handled. One father stated:

... I'm not actually sure if the solicitor actually handed the sheriffs paperwork or what went on. I was kind of quite lost, and even after my case the solicitor didn’t really come out of the courtroom. She obviously had another case – really busy – and she didn’t actually even come out to tell us ... what had happened.

5.12 Some pursuers could recall their solicitor having told them that a negotiated agreement would appear better to the sheriff than seeking a judicial decision. Others stated that their solicitor was working with them to identify a ‘bargaining position’. They expected to fall back from this position in further negotiations. One interviewee told us he had agreed to a minute of joint agreement for less contact than he had sought, as a ‘play-off’ against the financial settlement and the finalisation of his divorce. Another described this process in these terms:

The way I look at it is, if that’s the offer I don’t just accept – I ask for more and there’s compromise. She’s offered five hours, I’ll ask for seven – we may end up at six. That’s the way I stand at the minute.

5.13 Both sheriff clerks and sheriffs acknowledged that many parties sought to ‘barter’ over contact in this way, but they did not always view this as a cooperative approach to reaching agreement. One sheriff stated:
… if it’s … that one parent is saying ‘I’m content with contact, but for two hours on a Saturday afternoon’ and the other parent says ‘I should have three hours on a Saturday afternoon’ I think that a hammer to knock them on the head would be useful, but failing that it’s usually a case of nobody can really say anything compelling for one or the other and [I would] fix it at two and a half hours.

5.14 Sheriffs aimed to reach agreed solutions rather than impose decisions: Sutherland (2008) describes this as a ‘directional rather than judgmental’ approach. Sheriffs regarded proof hearings, which would require them to make an order, as an option that was always available, but very much as a last resort in contact cases. One sheriff clerk we spoke to found that cases going to proof were almost always resolved before the hearing. However, cases were resolved often on the actual day of the hearing, meaning that considerable effort and expenditure in arranging the hearing were still required. Some pursuers also expressed frustration that offers to negotiate appeared to come from the other party at the eleventh hour, when they had already made arrangements to go to court.

The use of support services during the court action

5.15 At a CWH, sheriffs have the option of directing parties to attend mediation or directing them to make use of a contact centre. We consider each of these in turn.

Mediation

5.16 It has been argued that being directed to attend mediation by the court can provide parties who would not otherwise consider mediation with the necessary impetus to attend (Hayes 2009). Court-ordered mediation has been found an effective tool where relatively stable families are involved (Mathis and Yingling 2008). Davis et al. (2000) found that 65 per cent of couples referred to mediation by courts in England and Wales went on to engage with it. Some sheriffs told us that they regularly referred parties to mediation; they described this as working well in some cases but did not generalise about which parents it might work for. One sheriff indicated that he did not refer parties to mediation.

5.17 A small number of interviewees discussed their use of mediation during the court action. Most had found it useful. They had appreciated the opportunity to discuss their situation with someone independent, and had found that mediation led to unexpected breakthroughs. One father, for instance, told us that during one session:

she [the other party] turns round and says out of the blue, ‘Well, why don’t you have him every fortnight for five hours?’ Now that to me – at least she’s offered me something … I’ve had nothing to go on before, it’s always been a court decision I’ve had to go on, because she has never offered nothing.
Two pursuers had not found court-directed mediation useful. One had chosen not to attend, believing her ex-husband would sabotage any contact agreed at mediation. The other described his two mediation sessions with his ex-partner as a ‘waste of time’ and felt that the mediator had been biased against him.

**Contact centres**

Child Contact Centres have been in use in Scotland since 1998 as a means of providing safe venues for conflict-free contact between children and parents who live apart from them. There are currently 36 centres operating (Relationships Scotland 2008), and three-quarters of their referrals come from courts (National Centre for Social Research et al. 2004). The centres have been identified as being a useful resource for referrers, although some parents have unrealistic expectations about the service they provide (Legal Studies Research Team 2003; Sproston et al. 2003).

All the sheriffs we spoke to had found contact centres to be an important resource, particularly where they had had concerns about the non-resident parent’s ability to care for the child. In such cases, they valued the opportunity for centres to produce reports on contact episodes. One sheriff referred to contact centres as ‘one of the good things to happen’, but pointed out that it was vital to secure the agreement of both parents to use the centre if a child was not to be subjected to pressure following visits.

The few interviewees who told us about a court order for the use of a contact centre had felt impatient for contact to take place elsewhere, but were generally positive about the difference that using the centre had made and the opportunity it had offered to their children. One father who had been using a centre described the experience as follows:

> It was a strange place to go to. I didn’t feel overly comfortable with it to begin with. But as time went on and you got used [to]
> … the people that were there to help you if you needed different toys or whatever, it did become a slightly more comfortable place to go to. But I mean, it was good for me and [my daughter] because it gave us time together.

In some CWHs we observed the use of contact centres being proposed and reviewed, and found they were the subject of some dispute. Scottish Child Contact Centres operate various levels of supervision, from high-vigilance monitoring of individual parents to lower-level supervision of the venue, with occasional checks on parents and children spending time together (Legal Studies Research Team 2003). Agents for non-resident parents usually pressed for a clear timetable for moving on from contact with supervision. On the other hand, agents for the resident parents raised concerns that the visits, or the non-resident parent’s behaviour during them, were causing distress for the child. In these hearings, the sheriffs supported the ongoing use of the contact centres, and emphasised that the contact which took place there should be understood by both parties in terms of an incremental process towards contact at the non-resident parent’s home.
Summary

5.23 In this chapter we have discussed how contact actions proceed towards resolution in Scottish courts and how contact is dealt with by solicitors and court staff. The key findings are as follows:

1. Actions in respect of contact may be dismissed or sisted in a number of ways without reaching a proof hearing. Very few such actions proceed to proof.
2. Sheriffs encourage parties to be less confrontational and promote non-adversarial approaches in court, emphasising shared outlooks and common goals.
3. Pursuers often continue to take an antagonistic approach to their case, while being aware of the court’s preference for a co-operative approach.
4. Where defenders have raised concerns about violence, abusive behaviour or mental health problems, adversarial approaches may be fuelled by pursuers’ perceptions that they are not trusted by the court.
5. Sheriffs and solicitors describe their role in contact actions in terms of promoting conciliatory approaches and compromise between parties.
6. Pursuers in contact cases may see their involvement with their solicitor in terms of a process of bargaining over contact.
7. Avoiding contact cases proceeding to a proof hearing is consistent with a non-adversarial approach and the principle of minimum intervention, but delaying resolution until the last opportunity may create practical problems.
8. Sheriffs can refer parties involved in contact cases to mediation. Few pursuers in our study had used it, however, of those who had some had found it beneficial and others had not.
9. Sheriffs strongly endorse the use of contact centres in dealing with contact cases, particularly where they have concerns about one party’s parenting skills or capacity. Pursuers using these centres appreciated being able to see their children, but were anxious that unsupervised contact should take place.

In the preceding chapters we have explored how cases come to court, and how they are dealt with and resolved. The next chapter describes the longer-term impact of contact cases, on the basis of the accounts pursuers gave some months after starting court action.
THE IMPACT OF COURT ACTION

6.1 Our research set out to examine how the court system in Scotland encourages negotiated solutions to contact disputes. We have described how such disputes come to court. Although CWHs are intended to be an informal means of exploring and resolving contact issues, there are still constraints on the involvement of parties in court proceedings. In the previous chapter, we noted that sheriffs seek to promote conciliatory rather than adversarial approaches. Court actions are undertaken in an attempt to change situations, and we wished to know what if any changes to family circumstances came about following this process. We move on, therefore, to look at the effects of court action some months after initiation of a contact crave. In this chapter we examine:

- contact arrangements after court action
- the length of court action
- outcomes of court action
- communication after court action
- pursuers’ satisfaction with the court process
- the likelihood of maintaining agreed solutions
- the impact of court action on individuals and families
- pursuers’ suggestions for changes to the court process

Contact arrangements after court action

6.2 At the time of our follow-up survey some months after the start of cases, 54 per cent were still active, while 46 per cent had either been disposed or sisted indefinitely. Seventy-two per cent of pursuers were seeing their children at least once a week. This contrasts with the 44 per cent who were seeing them at least once a week at the start of court action, indicating that the amount of contact had increased for contact pursuers. Arrangements that had been made in court were, on the whole, being adhered to, with 33 per cent of pursuers indicating that they were being completely adhered to and a further 50 per cent stating that they were being mostly adhered to. Only 4 per cent of pursuers indicated that they were not being adhered to at all.

6.3 Most of the pursuers we interviewed whose actions had reached a resolution reported that contact, and in many cases communication, between themselves and the defender was in compliance with the agreement reached in court, and that this had been the case for some weeks or months. One participant indicated that he and his child’s mother had decided not only to maintain contact but to also restart their relationship.

6.4 Not all cases had concluded with a decision made in court. Three pursuers told us at their second interview that they had dropped their action, stating, for different reasons, that there was nothing else they could do. They had no prospect of restoring contact, but did not foresee returning to court in the future. One interviewee had realised that seeking contact was impractical:
I guess it just came down to the fact that I can’t travel six hundred miles. You know – I can’t do it with my job now. It’s not physically possible, and I don’t have the money to do it.

The second pursuer had decided that continuing the action would have caused too much stress for herself and for her daughter. She felt forced into discontinuing it because she believed that her ex-husband would flout any orders made and would not allow mediation to work:

…but the whole thing just looked like a mountain of problems on top of everything else, and it was just eternal, it was absolutely eternal.

The third pursuer who had dropped the action stated that the levels of stress induced by the action, and the ongoing costs, would have jeopardised his ability to provide for his new partner and her children.

6.5 Even interviewees whose cases had not finished expressed concern over the final decision, and about whether the other party would co-operate with any judgment. Some of these pursuers had experienced an increase in the amount of contact, but were worried about the ongoing cost of the action and the poor communication between themselves and the defender. One father asked:

And what happens if that’s all I can afford like, and that’s me only got my eight hours? Does that mean I’ll never get her on holidays or anything ... just because I don’t have savings ...?

The length of court action

6.6 There was considerable variation in the duration of contact actions. Seventy-one of the time-slice sample of 182 cases examined in the CMS were still registered as active after 18 months, but only 42 of those had been heard in court within the preceding six months. The space of time between the booking of the writ and the last recorded call at court among the remaining 111 cases is reported in Table 6.1. The mean duration for dismissed cases was 8.5 months, and for cases that had been sisted 6.7 months.

<table>
<thead>
<tr>
<th>Table 6.1 Duration of dismissed and sisted court actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of months from writ to last call</td>
</tr>
<tr>
<td>0–3</td>
</tr>
<tr>
<td>Final disposal/dismissal (n = 73)</td>
</tr>
<tr>
<td>Sisted (n = 38)</td>
</tr>
<tr>
<td>Total</td>
</tr>
</tbody>
</table>

These figures indicate that most contact actions can be expected to be active for a year or more, though a large minority are dismissed or sisted within six months.

6.7 Our follow-up survey was conducted some months after pursuers lodged their case in court, and many cases were still going on at this point. Although 38
per cent of clients felt that the length of the case had been about right, 55 per cent of pursuers felt that their case had taken too long to settle. Three people felt that their case had not gone on long enough.

6.8 A few of the pursuers we spoke to said that their actions had been dealt with swiftly, and they were happy with this. Nevertheless, most had found that their cases had gone on much longer than they had expected, even though they had been warned about the timescale by their solicitor. They perceived different reasons for the delays in the process. Many said they thought the other party had ‘dragged their heels’ or ‘stalled’ to prolong the case. One pursuer thought that his ex-partner had tried to postpone hearings in whatever way she could, for instance by falsely claiming he had been diagnosed with mental health problems, while another was aggrieved that it had taken several attempts to serve a writ on his children’s mother at the start of the action. Other pursuers had found that the time it took to make an application for legal aid was unhelpful at a time when they had felt desperate for a solution to their contact problems.

6.9 Some parties said they would have liked their action to have been shorter, but appreciated the court’s reasons for taking so long and often saw the length of time that their case had taken as necessary. One pursuer told us:

… it would be like a month, month and a half each time by the time I had to go to court again. So it was quite bad. But I don’t think it could be done any faster. Because at the end of the day I look back and I see the way the courts are thinking, that maybe within that time span, if things were going all right we would get speaking …

Our observations confirmed that there were many instances when hearings were postponed or continued, for instance to allow a report to be submitted or read.

6.10 While pursuers were taken aback at how the court process could lengthen with repeated hearings, legal professionals treated this as routine. On one occasion we observed a sheriff cast doubt on a solicitor’s assertion that a case could be resolved if the hearing were postponed for two weeks, telling him he should know this was unlikely since he had ‘been around a long time’. Sheriff clerks we spoke to recognised that various factors militated against a short or rapid succession of hearings. They suggested that sheriffs were often inclined to wait to see if parties could reach agreement themselves rather than imposing a decision, that some parties sought loopholes in the law with which to delay progress, or that information was not always available on the day of a hearing:

You’re maybe continuing the child welfare hearing for maybe four weeks or something, so it’s not a lot of time on top of all the other pressures they have, plus getting the interview time. You know, with people’s other commitments as well, it can be quite difficult to be able to interview all the parties you want to in that timescale and then get the report. (sheriff clerk)
6.11 All the sheriffs we spoke to indicated that they did not view a speedy conclusion to a case as necessarily desirable, for instance if it left parties in entrenched positions or with issues that had not been fully resolved.

Outcomes of court action

6.12 Follow-up survey respondents were asked to indicate which outcomes they had achieved during their court case. Seventy-six per cent of pursuers stated that they were now having more contact as a result, and 72 per cent stated that they now had specified times for contact. Fifty-six per cent indicated that a court order had been an outcome in their case, as Figure 6.1 demonstrates.

Figure 6.1 Outcomes for pursuers (n=25)
6.13 The results presented in Figure 6.1 suggest that increased and more specific contact time were the outcomes pursuers saw as having most frequently been achieved. This reflects recent findings in England, which indicated that non-resident parents were likely to achieve changes to contact through court action (Hunt and McLeod 2008). A minority of pursuers thought that the action had resulted in arrangements that were more practical, or better for them. All the interviewees whose cases had concluded with an order being made in respect of contact were positive about the outcome. Court orders were described as ‘fine’, or ‘no problem’. Two pursuers told us that their court order reflected an agreement reached at mediation. Some pursuers who had been granted an order described this as an acceptable outcome, albeit one that fell short of what they had sought or hoped for. One pursuer thought that the contact that had been ordered – unsupervised for four hours per week at his own mother’s house – was ‘better than nothing’.

6.14 Whether they were fully or partly satisfied with their contact orders, these pursuers tended to describe the order as fundamental to what had been achieved, even though some of them described it as a rubber stamp. Some pursuers had gone to court specifically seeking a formal authorisation to ensure the success of contact arrangements:

… it was agreed that [my daughter] would be with me for Christmas and she would be with her mum for New Year, and vice versa next year, and keep an alternating pattern going. And that’s exactly what happened. Since the access agreement got put in place in the court order there hasn’t really been any problems.

Others saw an order as a guarantee against future problems with contact, even in cases where they described renewed communications with the other party. Pursuers perceived orders as giving them security in the knowledge that the defender would be reluctant to break the terms.

6.15 The actions of two pursuers had concluded with a joint agreement having been made without a contact order being made, and they expressed less certainty about what the contribution of the court had been. One case had been sisted once both the parents had managed to implement an agreed contact regimen. The pursuer described his happiness at being able now to see his son, and told us that he was able to communicate with his son’s mother regarding contact. However, he remained concerned that an order had not been made granting him parental rights, and that this left him with no input in important decisions regarding his child:

I’ve been told [by my ex-partner] ‘Well, you don’t have parental rights’, and I’m saying like, ‘Well, can I talk to the school?’ ‘Don’t you go near that school’ [she would respond]. You know what I mean, because I’ve no’ got any rights, which is totally wrong.
Another case concluded with a joint agreement being reached between the parents during a court hearing, and in such circumstances the sheriff would not usually make an order. This pursuer had found that his former partner was leaving the children with him for longer periods of time than he could cope with, and at times that were as unpredictable as before. He took the view that a court order would have set out the hours of contact in a way that would have made the children’s mother more likely to abide by an agreement.

Communication after court action

Eighty-four per cent of contact pursuers indicated in the follow-up survey that they had been in touch with the defender since the start of the court case. (This is significantly higher than the 62 per cent of contact pursuers who had been in touch with the other party in the month prior to the court case.) The majority of them had been in touch about contact arrangements (64%) or the welfare of the children (47%). This increase may reflect pursuers’ being required to communicate over changes in contact implemented at a hearing, rather than choosing to do so. An increase in the number of parents getting in touch does not necessarily imply that such communication is of high quality. However, 44 per cent of pursuers stated at follow-up that the communication was very or fairly good, as against 27 per cent of pursuers at the time the court case started. Furthermore, 44 per cent of pursuers stated that they had better communication with the defender about contact arrangements than before the court action (Figure 6.1), suggesting that quality of communication between parents improved over the duration of the court case. This parallels the improvements in co-operation between separated families that have been seen to arise from the non-adversarial procedures recently introduced in Australia (McIntosh et al. 2008; McIntosh 2009; Smyth 2009), and runs counter to claims made in studies of the English system that court processes in respect of contact do not necessarily improve family functioning (Trinder and Kellett 2007; Singer 2009; Trinder et al. 2009).

The qualitative data from pursuers illuminate how court action may be effective in encouraging good communication between some parties, and suggest why, by the time of our follow-up interview, many pursuers rated their communication with the defender as ‘fairly good’. Some pursuers told us that the contact regimen set by the action was going well, and that communication with the resident parent had been initiated or improved. One pursuer, for instance, told us that his son’s mother had only begun to comply with the contact order that had been made because the sheriff had threatened her with prison, yet reported not only that she had regularly observed the agreed contact visits, but also that the two parents had begun to get in touch and interact more in order to facilitate this:

*We don’t have to go back to court. Because we are ... speaking now, and I’m allowed in her house – I have a cup of tea with her when I go and pick [my son] up and that. And I’m clearing her garden next week, just helping her out.*

In this situation, although one of the parties did not welcome the new arrangements, the compulsion to comply meant that communication had to
take place, and in this case it was found to be sustainable. Other pursuers, however, described contact taking place regularly but without communication between the parents. The court action had led to changes in arrangements, but not in relationships. One of these individuals told us:

... it's just the same. Y' ken like, if she comes down to get the kids and go away, I won't like get a conversation out of her.

6.19 Other pursuers reported something of a thaw in their relations with the other party, or a new understanding on the part of the defender. They therefore expressed confidence in the potential for their new contact regimen to prevail, or, in some cases, to develop. One father, for instance, told us:

This is something – although set in stone at that point, it's between ourselves to obviously move on from it. We've now got a footing and a foundation to work from. And as I say, I'm not meant to even have him this Saturday coming – she couldn't commit one Saturday past, but she's got in touch yesterday to say he's obviously available again this Saturday. So I'm guessing we're co-operating and getting through this.

6.20 Although they described a working interaction with the resident parents, many pursuers still referred to resident parents with extreme vitriol, or spoke in a triumphant way of having won a fight with them, or of keeping them under observation lest a return to court should be necessary. One father, for instance, remarked:

So I think it's done the trick in that respect. She realises she's beaten and she can't mess me around any more.

Without returning to our interview respondents again at a later date, we cannot assess whether attitudes towards defenders such as these were building resentment while new contact arrangements were taking place, or beginning to wane as contact progressed. Where new contact arrangements were agreed in court and subsequently implemented, any developing communication might represent either a volatile temporary truce with the resident parent, or the beginning of increasing stability. One pursuer expressed at the end of his second interview this uncertainty over how communication with his child’s mother might develop:

At the moment everything seems to have settled down and everything’s OK, but I’m not naïve enough to suggest that that’s going to be the case for the rest of my life. So you know, if you were to phone back in three or six months it might be a different situation.

Pursuers’ satisfaction with the court process

6.21 On the whole, pursuers were satisfied with both the process of going to court and the resulting outcome. Sixty per cent of those in our follow-up survey indicated their satisfaction with the process, with just 15 per cent indicating
great dissatisfaction. Levels of satisfaction with the resulting contact arrangements were also relatively high. Sixty-eight per cent said they were satisfied with the contact arrangements agreed in court, while 13 per cent remained very unsatisfied. Seventy-one per cent were satisfied with their legal representation, with 13 per cent very unsatisfied.

6.22 A more detailed picture regarding satisfaction emerges from the qualitative data. Interviewees who had expressed dissatisfaction at their first interview regarded their actions as having achieved what they had sought (or at least a good result) by the time we interviewed them again. One pursuer looked back on his action in this way:

I was nearly punching the walls, to be quite honest with you. But my solicitor said, ‘[The sheriff]’s doing it to nurture her [the defender] along, he’s massaging her along to get what you want out of this.’ And looking back a year later, I fully appreciate that that’s what he did do.

6.23 Interviewees did not tend to express unequivocal satisfaction or dissatisfaction. Most interviewees who were happy overall expressed dissatisfaction with particular aspects of how their case had proceeded, while those who said they felt let down overall were happy with some aspects of the court process. Thus one pursuer told us that the sheriff’s involvement had been ‘a complete waste of time’ and that the system was ‘upside down’, but saw his action as representing ‘money well spent’ given that contact and inter-parental communication were now taking place.

6.24 The main issues which had influenced interviewees’ levels of satisfaction were their view of the sheriff or sheriffs, the length of the action, and the performance of their solicitor. Most interviewees whose actions had been resolved or were ongoing expressed satisfaction with the sheriff or sheriffs who had heard their case, describing them variously as sympathetic, fair, compassionate, understanding or supportive. Several said they had perceived the sheriff as having been ‘on their side’ in the action. A few interviewees voiced concerns about different sheriffs hearing their case and considered that inconsistent decisions by successive sheriffs had prolonged it. A recent recommendation by the Gill review calls for judicial continuity. Most interviewees also told us that they were very satisfied with the way their solicitor had handled their case, typically describing them as helpful, supportive and able to offer realistic advice about what to expect. One pursuer reflected:

I think she [the solicitor] dealt with it [in] the way that she knew the case would go. So I think she’s dealt with it the best possible way she could for me, and maybe for [my grandson] as well. Because she told us from the very beginning that I would probably get access, but I wouldn’t get a residence order.

6.25 Interviewees who had been disappointed with their solicitor perceived that they had failed to speak up for them or put up a fight in court. Some resentment was expressed by pursuers when solicitors had instructed them
not to speak in court. As Figure 6.2 demonstrates, the majority of survey respondents felt that it was a good thing that they had gone to court. Forty-nine per cent strongly agreed with that statement, and a further 27 per cent agreed. Most people, it would seem, do not regret their decision to initiate court action, and are satisfied with the outcome. The majority also agreed that they had been fairly treated by the sheriffs (61%) and that the court had acted in the child's best interests (59%). These positive attitudes towards the court action respondents had taken were reflected in their strong willingness to countenance doing so again. Most would go back to court if they felt it was necessary (70% strongly agreed).

6.26 Interviewees who had dropped their actions, those whose actions had concluded without an order having been made, and those whose actions were ongoing did not generally express satisfaction with the court process. They expressed feelings of disappointment or of being let down. The 24 per cent of respondents who did not agree it was a good thing that they had gone to court may similarly have regretted their decision to take court action.
The likelihood of maintaining agreed solutions

6.27 One of the aims sheriffs identified regarding their work on contact cases was to reach lasting solutions that avoided cases returning to court. Most of the pursuers we interviewed whose cases had reached a resolution were happy with their agreement or order, or accepting of it. Whether or not contact had been ordered or the action had achieved what had been sought, many of those whose cases had reached a resolution described going to court as having shown the other party that they ‘meant business’. They suggested that the other party had changed, or had begun to comply with contact, partly or wholly because that individual now knew that the pursuer would go to court over contact if necessary. One grandmother, for instance, told us:
She [defender] will listen. I think I’ve maybe frightened her by taking her to court. There’s no problem me getting the bairn.

6.28 The court action had forced some pursuers to realise that contact at the level they would like was not practical given the distance they now lived from their children. One pursuer told us that he had eventually realised he had to strike a balance between contact and the demands of a job that frequently took him around the world:

We have a full weekend, which is good. And the children are a lot more settled and a lot happier with it. I mean, I think I probably would like more time, but it’s making a judgement between – you know – affecting my work and the family.

6.29 Nevertheless everyone, except for the participant who had reconciled with his ex-partner, indicated that they saw the threat of, or potential for, future court action as underpinning the continuation of the present contact regime. Several pursuers indicated that they did not feel they could trust the child’s resident parent, and some said that they had accepted an agreement because they could not afford to take their action further. Without a court order, they described their agreement as an unstable solution:

Anything’s better than nothing. So I’ve just got to grin and bear it – you know what I mean. If I start causing hassle again I could end up no’ getting to see him [my son] again if she decides – I don’t know. I mean because I’ve still no’ got parental rights I can’t go up there and take him without her consent, otherwise she can phone the cops and get me done for kidnapping.

6.30 Some of the pursuers who described renewed contact relationships pointed to the difficulty and expense of maintaining them, including impractical travel arrangements, work requirements and health issues. One father, for instance, described a 400-mile journey he made every few weeks to collect or deliver his son.

The impact of court action on individuals and families

6.31 Many of the pursuers we spoke to a second time told us of health problems which they attributed to the pressures of and distress caused by the action or their contact situation. They told us about the extremes of stress and sleep loss they had experienced during the action. One father recalled this as follows:

I was working between seventy-five and eighty hours a week, going home to a letter from her solicitor on a Friday night, and then not being able to deal with that until the Monday morning. And that was one of the worst things ever, you know – half the time I just wanted to explode and make just everything go away.

6.32 Several other effects were reported, such as skin rashes, increased substance abuse and other risky behaviour, and difficulties concentrating at
work. These effects were often attributed to the money worries that the case produced or to feelings of guilt and pressure. Several interviewees told us that during the action they had suffered from depression, lost the will to live at some point, or needed to engage with mental health services. For some, part of the difficulty had been their sense at times that nobody was listening to them. A grandmother told us:

*I think I let myself get too down once it happened, and I went into too much grief. And then going through the process of going to court, I found that really hard. So I thought it was hard, it was more hard because I just felt nobody listened.*

6.33 The General Health Questionnaire was repeated with all the follow-up survey respondents, in order to assess any change in their mental well-being between the start of the court case and later on in the process. By the time of our follow-up, pursuers’ levels of stress and distress had dropped noticeably, and the differences in stress levels that we identified in Chapter 3 between divorcing parents with no contact issues and contact pursuers at the time cases were lodged in court had disappeared. Seventy-two per cent of follow-up respondents showed no, or few, signs of stress, as against 34 per cent of contact pursuers at the start of the case. Only 15 per cent of follow-up respondents were exhibiting high levels of stress at this time. It appears that proceeding through court action, and achieving a satisfactory outcome, serves ultimately to lessen stress levels among contact pursuers. This stands in contrast to previous findings of high levels of stress during and following contact actions among pursuers in England (Buchanan and Bream 2001; Bream and Buchanan 2003; Trinder and Kellett 2007; Collier 2009). Interviewees whose action had ended experienced relief from these effects and felt happier without the case hanging over them. Some, however, voiced concerns about the impact the action might have on their employment situation, for instance worrying whether the days they had to take off to attend court would count against them when their employers were laying off staff.

6.34 Levels of stress may play an important part in the quality of communication between parties. During the initial stages of court action, non-existent communication with the defender was strongly correlated with high stress levels. Over time, stress levels decreased while quality of communication improved. The majority of pursuers felt that their child’s quality of life had improved since the court action had been taken (61%). Those in our interview sample who had contact with their children at the time of the follow-up spoke of significant changes in their children’s happiness as a result of the restored or renewed contact. They perceived that they and their children increasingly enjoyed the time they spent together, and that their children felt calmer and more secure and their behaviour had improved. Fathers of very young children said they felt a strong bond developing between themselves and the child(ren), or that they felt more fulfilled as parents. One commented:

*Basically it’s made me want to be more of a parent. I don’t know, I’ve always felt the same about my children really, even though I haven’t seen them. It just made me fight more for them,*
and I never thought I’d have to do that, ken what I mean? But it just showed us how much I do love them.

6.35 Pursuers said in interviews that they had incurred varied and significant financial costs in the course of their actions, the scale of which had often taken them by surprise. Some interviewees told us they had struggled to cover their legal fees. While many had found ways of doing so, for instance by draining savings, borrowing or taking on extra work, others indicated that they would not have pursued action without legal aid, or that they had reached a cut-off point at which they had had to reach an agreement or withdraw because they could no longer afford the action. When telling us of their decision to undertake court action, interviewees who reported difficulty in seeing their children routinely justified the costs on the basis that making this expenditure was the only way they could see of addressing contact problems – if money was the only way to see their children they would pay it. They asserted that money had to be found to pay for the action whatever the consequences in terms of debt or poverty.

6.36 Most pursuers demonstrated little awareness of legal aid eligibility criteria, although some told us that the award of legal aid support had eased the financial impact on them or had taken a weight off their mind. Pursuers taking action against legally aided defenders were frequently concerned that parties with legal aid were more inclined to incur court costs that they would otherwise have avoided. These sentiments were usually expressed alongside resentment that government money was, in their view, being used to prevent parents or grandparents from seeing their children.

Pursuers’ suggestions for change to the court process

6.37 In general, the pursuers we interviewed did not set out clear objectives or ideas regarding how the court process could be improved for other parents or children involved in court action in the future. Those who were dissatisfied with some aspect of their action could identify the source of their dissatisfaction, but could rarely identify what would improve things – or else they saw problems as inevitable. Some suggestions for improvements were offered, however. One pursuer thought that parties should be ordered to attend mediation more swiftly, rather than treating it as a final option, and another wanted to see more judicial pressure applied to the defender. Another thought that cases should not cost as much to pursue, and that non-resident parents should have a basic right to see their child. Two of the most common themes to emerge were the perceived lack of opportunity to talk in court, and the lack of time allowed reporters to assess children and their circumstances.

6.38 Several pursuers asserted that parents should have an opportunity to speak in court. They believed they had not been allowed to do this, and thought that the sheriff should be more proactive in questioning both parties:

…when we actually went into the child welfare hearing I wasn’t allowed to speak at all. And I didn’t like that, because there was things being said and I thought I could have put my point across at that time.
One pursuer suggested that there should be a helpline offering court advice to parents undertaking a court action, as distinct from one offering counselling or support:

*I think [I want someone] along the lines of a sheriff that just deals in family cases or a magistrate being there – you know – just to answer the phone. ‘Right’ [I would say] – ‘my solicitor has said this and that and ... where would I stand if that happened?’ You know, because solicitors – they do give you the worst-case scenario, but they can’t say what a sheriff’s going to think.*

6.39 Many of the men we spoke to also believed there to be a systematic bias in favour of women in the family court system, which they thought should be addressed, and the two non-resident mothers and the grandmother we interviewed saw their children’s resident parents as holding more sway in their contact action and with social work. One of the mothers, for example, stated:

*If you are the parent that’s suddenly without residence of the child, then you get very little opportunity to say anything. You’ve got your initial writ, and that’s it.*

These women also thought that this bias should be addressed. The perceptions of individual pursuers may not indicate actual bias, however. A recent study of outcomes of contact actions in England, for instance, found no evidence of bias against non-resident parents (Hunt and McLeod 2008).

Summary

6.40 We have seen in this chapter that pursuers of court action in respect of contact were, on the whole, usually satisfied with the court process and with the outcome of their case. For most, it had been an effective way of resolving disputes relating to contact arrangements. A minority of pursuers remained dissatisfied with the court process, or the outcome of their case. It should be borne in mind that these views were predominantly those of non resident parents and of fathers. The improved relations between parents and children that many reported reflect the outcomes reported for less adversarial court measures introduced in Australia (McIntosh et al. 2008). Some aspects of what pursuers told us suggest that these changes may nevertheless be somewhat unstable for some families. The key findings from this chapter are:

1. The amount of contact generally increased for pursuers we surveyed during the court case, and this increase was maintained at the time of our follow-up.
2. Pursuers whose cases were resolved with a court order felt more confident of lasting change than those who had reached an agreement without an order being made.
3. Fifty-four per cent of cases surveyed were still ongoing at follow-up. Many pursuers felt that the court case had taken too long, but some of them felt that this was inevitable or, in retrospect, unavoidable. Those whose actions had not concluded were anxious about how long this might take.
4. Most pursuers were satisfied with the results of their court case.
5. The quality of communication between pursuer and defender had often improved following the court case. Some pursuers had continued to express ill feeling towards defenders, suggesting that improvements in communication may be unstable.

6. At the conclusion of a court case pursuers were usually optimistic that arrangements could be maintained, but they did not discount the possibility of returning to court in the future should contact break down or changes be needed.

7. As a result of court action, some parents we spoke to realised that their original plans for contact had been impractical.

8. During the court action, pursuers often experienced severe stress, depression and other impacts, but these stresses were relieved significantly after the case had been concluded.

9. Pursuers who maintained contact following the court case reported that their children were happier as a result.

We have explained the court process in respect of contact, from the decision to take action through to the aftermath of cases, in the preceding chapters. Having focused on the experiences of pursuers, we now turn our attention to how the voices of children are heard in the court process and examine how courts fulfil their duty to identify and prioritise children’s general welfare in court actions in respect of contact.
7 PUTTING CHILDREN AT THE CENTRE

7.1 In the preceding chapters we have followed the path of those taking court action, from the identification of seemingly insurmountable contact problems through to their participation in CWHs, and examined how all those involved work to achieve the consensual and satisfactory outcomes which most pursuers reported. The Scottish legal system is among those jurisdictions that have taken on board the UNCRC’s requirement, in respect of the rights of children, that children should have a voice in family law matters:

... the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative. (UN Convention on the Rights of the Child 1989, Article 12(2))

The Children (Scotland) Act 1995 enshrined in law the rights of children in Scotland to have their views considered in family law proceedings and outlined their right to be consulted about their future and about their wishes and feelings during court cases. Since our account so far has centred on the views of pursuers and legal professionals, we consider in this chapter how pursuers and courts ensure that children’s voices are heard in any court action in respect of contact, and how children’s general welfare is made the foremost priority in any decisions reached. The following is based on the accounts of court staff and pursuers, since we were unable to speak to children or defenders directly.

7.2 Opinion is still divided among professionals and parents as to whether it is in a child’s best interests that they be involved in court proceedings, and what form consultation with children should take (Tisdall et al. 2004). Commentators disagree about whether children are so vulnerable that they need to be protected, and about whether they actively create their own identity and so need to have an active role in events that affect their lives (Brannen 1999; Balen et al. 2006). In addition, even where there is agreement that a child’s general welfare is best supported by their having a voice in court proceedings, enabling that involvement to take place can be challenging. The autonomy and flexibility of approach in professional practice mean that there may well be inconsistencies concerning whether children are told about the options available to them and are able to assert their rights (Tisdall et al. 2004). Nevertheless, previous research has found that children in Scotland are generally keen to have their views considered when parents are separating or divorcing (Mayes et al. 2003). Children elsewhere have stated that they want some say in where they are to live and how they are to spend their time, but do not wish to be asked to choose between their parents (Paetsch et al. 2009).

7.3 This chapter examines the evidence collected from parents and professionals about the involvement of children in contact cases, and their perceptions about acting in the child’s welfare. We will describe:

• how pursuers inform their children regarding court action

77
• court mechanisms for involving children
• how legal professionals act in the best interests of the child in contact actions

We draw on evidence from all areas of the study, including our surveys, interviews and observations.

Children’s knowledge about the court action

7.4 Half of the pursuers with contact issues who completed a survey stated that their children had been told about the court action. Few in our interview sample said that their children had been told about it, and this is consistent with previous research in England and Wales (Walker et al. 2004). The parents in this study gave a number of reasons for not talking to their children about the court action, including:

• going to court in respect of infants who were too young to be consulted
• perceiving children to be too young to understand, irrespective of their actual age
• not wishing to burden children
• believing that children did not want to know, or were refusing to talk about the action
• being concerned that by talking to children, a pursuer could be accused of pressuring the child, or influencing them in some way

One father told us:

I think her mum’s told her about it – what’s going to happen and that – but she’s like, ‘Dad, I don’t want to speak about it. I think I don’t want to speak about it’ cos it just makes me upset.’

7.5 Only one parent we spoke to was asked by his solicitor what his children wanted. We cannot be sure how routinely solicitors ask clients undertaking court action such questions, but establishing children’s wishes did not emerge as central in how parents and grandparents recollected agreeing on a course of action with their solicitor. Whether or not parents are able to gather the views of their children, it is of crucial importance to the courts that they (the courts) do so, and we turn now to explore the means by which children can be given a voice in contact actions.

Mechanisms for involving children

7.6 A variety of mechanisms exist during contact cases for ascertaining children’s wishes and feelings and involving them in the decision-making process. These mechanisms include:

• a form (F9) to be completed by children, outlining their views
• court-ordered reports
• representation by a curator ad litem or advocate\textsuperscript{11} at a CWH
• representation by a solicitor
• speaking directly and in private to sheriffs

Many of these mechanisms are directed by adults, and it is adults who make decisions about the competency of children to give their views.

The F9 form

7.7 This form can be sent at any time during a case to a child who is the subject of a court action regarding contact. It serves both to inform the child about the action and their options, including their right to communicate their wishes to the sheriff directly, and to provide them with the opportunity to communicate with the sheriff by filling it in and returning it to the court. It is designed for them to complete themselves. When a contact action is raised a crave may be sought for the court’s authority to serve the F9 on the children. More commonly, a request is made at a hearing for the form to be sent to the children, or alternatively the sheriff might authorise the notification \textit{ex proprio motu} by serving the form on the child. There may be a motion to dispense with this intimation if a child is not deemed to be old or mature enough (usually, age 12 and above). Court staff decide whether children are competent and/or old enough to complete a form, on the basis of the limited information they receive at the start of a court case. On the basis of the information that we received from the CMS, it appears that relatively few children are sent the F9 to complete, although we were unable to ascertain an exact proportion. Previous research, however, found that F9s were completed in only 26 per cent of cases (Hardin \textit{et al.} 2000).

7.8 The non-resident pursuers among our interviewees whose children had completed an F9 were concerned that the form had been filled in with the assistance, or in the presence of, the defender, who was the resident parent. They suggested that this gave the defender an unfair advantage, and the potential to influence what the child wrote. Two pursuers stated that they believed the other parent had written letters to the sheriff purporting to be from the child. Pursuers also complained that such issues were compounded because they were not allowed to see the F9 form, leaving them unable to respond to any issues raised.

Court-ordered reports

7.9 A report may be ordered by the sheriff, sometimes at the request of either the defender or the pursuer or both, and charged to one or other party. If a report is ordered, the case may be sisted until the report is available. The estimates of this interval by different sheriff clerks ranged from five to eight weeks. The report itself may be required in advance of the next hearing to allow time for its reading. The sheriff decides what the report should cover and, where the

\textsuperscript{11} Although advocates are sometimes used to help children to express their wishes and feelings this is somewhat rare, and we did not come across a case where an independent advocate was used. We are therefore unable to comment on the utility of this.
views of a child are sought, consideration must be given to keeping these confidential. A reporter will be suggested or nominated during the hearing, and the report will be lodged with the sheriff clerk on completion. There may be local variations in how the report is distributed or to whom it is made available.

7.10 Among the subset of 182 CMS contact cases we examined over eighteen months, 39 per cent of case records indicated that a report had been ordered. The discussion of reports during CWHs tended to focus on what was said by, for example, teachers and GPs about the child’s interests or wishes, rather than quoting or examining the actual words of children themselves. Some pursuers we interviewed expressed the view that more, or lengthier, visits or observations were needed for a reporter to ascertain the general welfare of the child. One grandmother, for instance, felt that the report that had been produced in court stated the opposite of what the reporter had said to her when he had visited. She felt that it could not possibly represent her grandson’s views on the basis of the one hour the reporter had spent at her house and the one hour they had spent at his residence:

… you know, we’re talking about kids and their upbringing here. At the end of the day a five-minute welfare hearing and a half hour’s – you know – independent solicitor … even as experienced as they are, I think really you need to do it over a few visits. To me, that is the only way honestly that you can assess how a child is genuinely feeling.

**Using a curator ad litem**

7.11 A curator *ad litem* can be appointed by the court to assess the views of children and to make recommendations on their behalf. Their role differs from that of solicitors in that they have to decide what is in a child’s best interests, rather than acting on instructions. Frequently, a curator *ad litem* will first have been commissioned to spend time with the child and the parties and to produce a report for consideration by the sheriff. A curator *ad litem* will also be present in court if needed to talk through their findings. We observed the presence in court of one curator *ad litem* acting for children whose relocation and attendance at a new school had been an issue in the case. She discussed her report and remained the focus of the sheriff’s attention for much of the hearing, answering questions about how the children’s teachers viewed their situation and about what the children had said to her. In this way, she was able to inform the sheriff concerning the children’s views about their school and the extent to which the move would impact on their welfare.

7.12 Some of the pursuers we spoke to identified the report of a curator or reporter as the primary means by which the court had gained information about their child’s circumstances and views. In most cases, pursuers were satisfied that the curator had been able to inform the court as to the child’s best interests, but some saw the curator or reporter as having misrepresented the children’s needs on the basis of too short a visit.
**Representation by a solicitor**

7.13 Children aged 12 or over have the right to instruct their own solicitors and thus become parties to the case in their own right (Age of Legal Capacity (Scotland) Act 1991, s.2(4A)). This option does not appear to be taken up very frequently, and indeed in only one case during our study was the child represented by his own solicitor. This child had instructed a solicitor at the insistence of his resident mother, and although his father (the pursuer) had initially been unhappy about this, he subsequently changed his view:

> Initially, I thought it was nonsense. Then when [laughs] obviously the [child’s] solicitor turned round and said ‘Yeah, they want more contact with their dad’ I thought ‘That’s a great idea’, because I was – well, somebody else said I was actually getting what I wanted.

Very few solicitors who took part in our study had ever represented children. Previous research, however, has indicated that children are unlikely to know how to instruct a solicitor, and are heavily dependent on their parents or other trusted adults to facilitate their access (Tisdall *et al.* 2004). This may not be the case in other jurisdictions, however. Legal professionals in Canada, for instance, have identified legal representation of children through the Office of the Children’s Lawyer as one of the most commonly used mechanisms for hearing the voice of the child in their system, although they recognised some uncertainty over the nature of the Lawyer’s role (Paetsch *et al.* 2009). As we have already seen, few parents even mention the court action to their children.

**Speaking directly to sheriffs**

7.14 A sheriff may request to speak with a child individually *in camera*, which means that the child will discuss their views with the sheriff in Chambers. Sheriffs and sheriff clerks we spoke to suggested that this happens only rarely, and the sheriffs we spoke to were often reluctant to talk to children directly. They gave a number of reasons for this, such as:

- the quality and usefulness of reports usually made it unnecessary
- it is inappropriate to require children to attend a ‘building full of criminals’
- there is a risk of raising an expectation that might not be fulfilled if the sheriff does not see what the child wants as being in their best interests
- it is potentially difficult for sheriffs to act on the basis of what the child suggests without giving rise to speculation among parents about what has been said

Judges in other jurisdictions have raised similar concerns (Parkinson and Cashmore 2007; Paetsch *et al.* 2009). However, sheriffs did not rule out the possibility that they might choose to speak with the child if they perceived a need to do so. Some told us that in certain, albeit rare, cases this was an important measure:
… these views are confidential for the court, but I’ve seen a situation where the parents have thought that one parent was favoured, and it’s how to deal with this despite them agreeing that it’s best for the child to be with A. [I need] to introduce subtly that the child ... really wants desperately to be with B. (sheriff)

7.15 Sheriff clerks indicated in our interviews that it was very unusual for a sheriff to speak with a child named in an action, particularly if the child was under 12. One told us that the sheriff may talk to a child in order to check that they are not being pressured or misrepresented by one or other parent. Another indicated that there was a risk that speaking to the child could increase the pressure on children at home to tell a particular story. Only two pursuers in our study indicated that the sheriff had spoken directly to their children, who were aged 11 and 9. Both felt that the child’s input had been of benefit both to the child and to the case, but both stressed that they had not asked their children what they had said to the sheriff, since they saw this as potentially pressuring them.

Lack of consultation

7.16 The mechanisms described above are part of the toolkit available to obtain the views of children. However, many pursuers we spoke to said that no further information had been gathered beyond what had been submitted by the parties themselves. These pursuers were concerned that no report or conversation had taken place between sheriff and child since they felt that their child’s point of view should have been independently assessed and had not been. One father complained that neither solicitors nor courts would have a clear picture of his child when taking important decisions on her behalf:

I showed my solicitor a picture of my daughter, and that’s all they’ve ever seen of her. If they passed her in the street they wouldn’t think ‘Oh yeah, I’ve helped your dad’ – you know what I mean? And I think that in itself is wrong. You know, nobody knows what my daughter’s about ...

7.17 In our interviews, pursuers often stressed that the children’s welfare was being ignored or poorly served since no one had asked the children what they wanted. These views were usually linked to a belief that the defender was using the child as a pawn or prioritising their own interests.

Acting for the welfare of the child

7.18 On the whole, pursuers in our survey tended to think that the sheriff, their solicitor and they themselves had acted in the best interests of their child, but they often thought that the other party and the solicitor of the other party had not done so to the same extent. As Figure 7.1 shows, 94 per cent of pursuers felt that they had acted in their child’s best interests to a great extent, confirming the point that although parents may have different views of what is in a child’s best interests, they nevertheless identify themselves as acting in those best interests when pursuing a court action.
7.19 These findings were borne out in our interviews with pursuers. Some told us that sheriffs would seek to hold a CWH in order to ensure that their child’s welfare was served. Some pursuers who were unhappy with the measures taken by the sheriff said they still felt the sheriff had acted to promote the general welfare of their child. Two pursuers went so far as to say that the sheriff had focused on the child’s interests to the exclusion of other important concerns.

7.20 The sheriff clerks also emphasised that sheriffs always had the welfare of the child to the fore in any decision they took. Sheriffs told us that they frequently had to work hard to maintain this focus with those parents who continued to have problems with each other:

... it’s constantly bringing people back to what we should be concerned about, namely the children ... I mean, I’ll say in terms, ‘This is not a parent welfare hearing, this is a child welfare hearing.’ (sheriff)
7.21 The three guiding principles of prioritising children’s welfare, keeping intervention to a minimum and listening to the voice of the child were evident in the handling of cases at hearings we observed. At the conclusion of many CWHs, another CWH to review the situation was agreed expressly with a view to avoiding proceeding to proof, again minimising the intervention of the court. In all instances, there was a clear objective of identifying the implications of any assertions or proposals for the children in the case. Some motions or suggestions were refused on the grounds that their argument did not promote the general welfare of the child. We observed many examples of sheriffs reminding parents who were arguing to focus on the needs of the child:

Slagging each other off does no good at the end of the day …

it’s not what suits you, it’s what’s in [the child’s] best interests
(sheriff, during CWH)

7.22 At many hearings, we also noted an impetus on the part of court staff towards encouraging parents to resolve matters as far as possible between themselves. Speaking of one case in particular a sheriff told us:

This is a classic example of a case the courts should not be involved in. Both parents have shown they are intelligent people, and I’m sorry, it is up to both of you to sort this … (sheriff)

7.23 Solicitors’ input often appeared to be oriented towards this shrieval focus on children’s interests. In another hearing, we observed the sheriff framing an argument over the continued use of a contact centre in terms of what was best for the child. The father, who was the pursuer in the case, proposed moving on from contact within the centre to taking his child for walks outside. His agent opened his initial statement by recalling the sheriff’s eloquence on the previous occasion with regard to parents having the right to fulfil their responsibilities to their children. He then stressed that the contact centre was ‘stifling’, and ‘a very artificial environment for the child to get to know their father in’, and therefore that the child was being denied ‘the chance to develop a proper relationship’. The defender’s solicitor, for her part, stressed that it was ‘clear’ that the child worried about what her father said to her during contact visits and that this was a basis for not extending current contact arrangements. The hearings we observed centred, then, on children’s general welfare, but differing interpretations emerged of what might constitute that welfare.

Maintaining the centrality of the child

7.24 In this chapter we have described how children can have their views heard and considered during the court process and how their interests are taken into account. The key findings from this chapter can be summarised as follows:

1. Few pursuers had told the children about the court action or believed that the child had been told by someone else.
2. Most parents did not consult their children, as they felt they were too young, or did not want to burden them.
3. Some parents were worried that they could be accused of pressuring the children if they discussed the court action with them.

4. Court staff have a variety of mechanisms available to them for ascertaining children’s views. The most commonly used methods are court-ordered reports and the F9 (even though it is not used in the majority of cases).

5. Few children in contact actions are represented by a solicitor, or talk to a sheriff in person.

6. Some pursuers were concerned that the time reporters allowed for visits to observe children’s home environments was too short to enable them to establish their best interests fully.

7. Almost all pursuers surveyed believed that they were acting in the best interests of the child, and most believed that the sheriff also acts in this way.

8. In court, sheriffs intervene to maintain a focus on children’s general welfare. However, solicitors base opposing arguments on divergent accounts of what will support that welfare.

These findings are consistent with those of other research, which has highlighted similar issues when involving, informing or consulting children in contact actions (Tisdall et al. 2004; Hardin et al. 2000). Although judges in many other jurisdictions have the option speaking directly to children in contact actions, divergent judicial opinions on this have been observed among them. It may, for instance, be seen as an important means of involving the child respectfully, gaining first hand opinions and exploring options (Krinsky & Rodriguez 2006). Alternatively, it can be seen as a practice inappropriate to the skills, knowledge and training of judges that may result in stress for children for little benefit (Parkinson and Cashmore 2007; Paetsch et al 2006). Paetsch et al. (2009) suggest that jurisdictions where judicial interviewing of children is rare could usefully learn from those where it is common such as Quebec, where it is a judicial duty. Children often find that their views on family breakdown are not sought or listened to by their parents, and parents for their part offer a variety of justifications for not consulting or informing their children about separation (Smith et al. 2003; Walker et al. 2004; McCarthy et al. 2007).
8 UNDERSTANDING CHILD CONTACT CASES

8.1 This research set out to enhance understanding of the small proportion of separated parents or grandparents in Scotland who go to court to resolve contact issues and of how the Scottish court system operates when dealing with their cases. The aims were to examine:

• the number and type of contested contact cases in Scottish sheriff courts
• the characteristics of parents and children involved in contact disputes being resolved through court action
• the processes involved in court action in respect of child contact
• pursuers’ reasons for undertaking court action, their previous attempts at resolution, their use of support services and the outcomes they desired
• the role of child welfare hearings (CWHs) in relation to other court action
• whether the views of children and young people are considered by courts and parents, and if so in what way

In this final chapter we outline how the findings from previous chapters relate to these aims and present conclusions based on these findings.

The number and type of contact cases

8.2 Over a fourteen month period, 901 primary craves for contact were brought before the courts in three Sheriffdoms. In addition, nearly three thousand divorce craves were lodged, of which, 3 per cent included contact as a secondary crave. Over time, some divorce actions came to include discussions about child contact, even where it was not lodged as a crave. Of the 901 cases where contact was a primary crave, 28 per cent included a crave for parental responsibilities and rights.

Who goes to court about contact?

8.3 Our descriptions in Chapters 2 and 3 show that pursuers vary, both in terms of their characteristics and of the circumstances of their cases. Pursuers include both parents and grandparents, and both resident and non-resident parents. Most pursuers are fathers and most are experiencing some contact but wish to change the arrangements in some respect. The average age of the eldest child named in contact actions is eight.

8.4 Pursuers in our survey reported severe levels of distress on an established screening tool for mental health at the time they initiated court action, and these levels were associated with the quality of their communication with the other party. Survey respondents in our study craving divorce who had no contact issues experienced significantly less stress, and were also more likely to be seeing their children, than those craving contact. Anxiety about attending court may also have compounded the distress caused by contact and communication problems. Going to court did not, therefore, appear to be a course of action that pursuers took lightly. These findings suggest that many of those taking contact action may have unmet needs in terms of support. The severity of the stress pursuers reported is a cause for concern and may work
against the capacities for self-sacrifice and resilience necessary to reach compromise in court.

8.5 Some interviewees describe court action as a fight to prove to children that they care, suggesting that both male and female pursuers have a considerable emotional stake in getting what they want. It may be difficult or unlikely for such individuals to co-operate with a process where they are expected to work co-operatively to resolve the dispute.

**Why do people go to court about contact?**

8.6 In our sample, contact actions were usually undertaken because of dissatisfaction with existing contact arrangements, rather than because contact was not taking place. Only 30 per cent of pursuers with a crave for contact had no contact with their child or children at the start of an action. Most pursuers taking action in Scottish courts were seeking to resolve an issue concerning the schedule of contact or to ensure that the other party kept to previously agreed arrangements. The Scottish court system should, therefore, be understood as a system whose main business in relation to contact actions is regulating or amending contact rather than just initiating it.

8.7 Interviewees taking court action felt that contact problems were not able to be resolved privately. Furthermore, most pursuers in the survey felt that communication with the defender at the time the action started was poor or non-existent. People initiated court action with a primary crave for child contact because their problems had become intolerable and they could see no way of resolving them. In our survey, the reason pursuers most commonly gave for taking court action was that they could not reach agreement with the defender by any other means. Pursuers’ explanations in interviews suggest that they felt a need to justify to others why they took court action. They emphasised that they were driven to take court action, or were forced into it by the other party, and thus felt they had no choice in the matter.

8.8 Most pursuers in our survey sought, and generally expected to succeed in achieving, increased contact or a better arrangement for the children through the court action, in some cases swiftly. However, almost a fifth did not expect to achieve what they sought in the court action. Pursuers also expressed a desire to see justice done or to achieve equality between the parents in the allocation of contact. Some pursuers told us in interviews that they wanted to be able to demonstrate to the children later in life that they had been prepared to take legal action. Such views suggest a range of motivations determining why some people go to court over contact even when they do not anticipate a successful outcome. The qualitative evidence presented in this study, however, suggests that the concerns of fathers and mothers are similar in cases where they are non-resident parents, and that these concerns are different from those of resident parents. This emphasises the importance of not assuming that issues for non-resident parents are the same as those of fatherhood.

8.9 Few pursuers responding to the survey had used services other than legal services to help them resolve contact issues before starting court action.
Those parents interviewed who had been to mediation before going to court said it had not achieved anything, but most had not tried it. A few pursuers had sought advice or information from other sources that were appreciated but were not seen as having helped, and in some cases the pursuer was directed to a solicitor anyway.

8.10 Prior to court action, the first port of call in resolving contact problems for pursuers tended to have been a solicitor, often following the advice of their relatives. Solicitors in our survey reported that clients coming to them to address contact disputes tend to be emotionally fragile and have a poor understanding of the legal process. They also harbour unrealistic expectations of what court action can achieve. Pursuers report that many solicitors will encourage parties to seek resolution without going to court. If solicitors are seen as the only available resource, this may fuel a determination on the part of pursuers to assert that their situation requires legal redress.

What happens when people go to court?

8.11 Almost all those surveyed who were pursuing a contact action attended a CWH. Legal professionals view CWHs as providing an important and less formal forum in which parties can interact with each other and with the sheriff to reach a negotiated resolution. We observed sheriffs adopting a reassuring manner and a relaxed style of communication in the courtroom that avoided legal jargon. Such approaches helped pursuers to reduce the anxiety that they felt. Although most pursuers surveyed (81%) felt prepared for attending a CWH, some said that they had felt under pressure when negotiations had taken place between solicitors immediately ahead of the hearing.

8.12 Sheriffs considered CWHs useful since they provided an opportunity to speak directly to parents or grandparents. Pursuers told us in interviews that they appreciated being spoken to by the sheriff during their hearings. They perceived a strong positive impact where a sheriff had explained the judicial point of view, even if the pursuer disagreed with that view. In many hearings we observed, however, sheriffs rarely spoke directly to parties, or did so only to gather basic factual information. Court staff also stated that CWHs gave parties the opportunity to have their say. Half of pursuers said that they had spoken during a CWH. Our observations and interview data suggest that parents or grandparents contribute to CWHs to a very limited extent, certainly to a lesser extent than some pursuers told us they had expected to be the case. Those who said they had contributed to a CWH and thought they were listened to felt better about what had been decided.

8.13 Pursuers may not have made a contribution to the CWH because they had not wanted to, or because they had felt they were not supposed to. Pursuers told us that solicitors had discouraged them from speaking in court or had advised them not to. Some felt that they had been prevented from speaking their mind during the hearing, or that important issues had been left out of the hearing because they had been prevented from talking about the defender. The participation of parties was observed to create tension at some points during hearings. The sheriff’s role is to maintain the focus on a child’s general welfare, and to that end conversations that appeared to deviate from this or
veer towards accusation or blaming were swiftly cut off, in some instances requiring the sheriff to assert the authority of the court.

8.14 Just under half of a subset of contact cases examined over an 18-month period had been through three or more CWHs, while in 21 per cent of cases there were six or more such hearings. Sheriffs, by calling a cycle of hearings at court, can oversee changes in arrangements that are gradually introduced, tried out and reviewed, which means that cases rarely need to go to proof. This is seen as one of the benefits of the CWH system by sheriffs and sheriff clerks, who emphasised that it was not necessarily desirable to conclude a case quickly.

8.15 Nevertheless, the indefinite continuation of contact actions through a sequence of CWHs had led to dissatisfaction on the part of some pursuers. They had not anticipated the length of time the process might take, and some had expected to have their case resolved at the first hearing. Those fathers for whom court actions had involved a number of CWHs were dismayed that their capacity as parents was being assessed through this process. Not knowing how many hearings there might be, pursuers without legal aid whose cases had lasted for some time began to worry about the mounting costs. The practice in some courts of different sheriffs hearing a case on subsequent calls at court meant that some pursuers worried that changes they viewed as positive might be revoked if the next sheriff had a different outlook.

8.16 Most pursuers in our survey went to court seeking an order in respect of contact. Many pursuers in interviews described their forthcoming contact actions as a ‘fight’, and some listed witnesses they could supply to support their interpretation of events. Sheriffs told us that parties often had a confrontational outlook, or were preoccupied with arguments between themselves. Such views suggest that pursuers often see a hearing as an event at which they have an opportunity to prove their case against the other party, with a judicial order granted to the ‘winner’. The vast majority of cases we examined did not proceed to a proof hearing, however. Most were resolved or dismissed at a CWH through a joint minute of agreement, or had been sisted for a considerable period. Sheriffs maintained an emphasis on a common goal for parties and themselves of securing children’s general welfare, and embraced a conciliatory role in which they encouraged parties to compromise. They discouraged parents from complaining about or blaming each other, and relied on solicitors to support them in this.

8.17 However, we observed solicitors arguing for a variety of different measures (e.g. increased contact with a father or a psychological report on the child) on the basis that they would support a child’s general welfare. In interviews, pursuers spoke about compromise in terms of bargaining or of trying to achieve parity in contact time, which suggests that they may still think in terms of securing a favourable position for themselves rather than agreeing what a child needs. A process of bargaining may arrive at a ‘least worst’ situation for the two parties rather than a shared understanding of what will be best for a child. In such a process, either parent may still construct their children’s welfare in terms wholly consistent with their own interests in the way that James (2004) has suggested.
8.18 Although the few interviewees who underwent court-ordered mediation found it useful, it is not helpful to assume that those who were not referred might have found it useful too. There may be good reasons why a sheriff does not refer disputing parties to mediation.

Reflecting on court action

8.19 We found that pursuers of court action in respect of contact were usually satisfied with both the court process and the outcome of their case. Few of these people, who were mostly male, regretted their decision to take court action, and for most it had been an effective way of resolving disputes around contact arrangements. Interviewees whose actions had finished expressed greater satisfaction with the results of court action than those whose cases were still ongoing.

8.20 Levels of contact between the non-resident party in our survey and children usually increased during and following court action. The quantity and quality of communication between parties was often seen by pursuers to have improved during a court case, but they welcomed the use of court orders as a measure that would ensure that contact arrangements would be adhered to and that they would be able to participate fully in the life of their child.

8.21 Most pursuers felt that they would go to court again if that was necessary, and believed that this willingness on their part to take court action again acted as an incentive for the other party to comply with the arrangements put in place. This may also indicate that, far from cases returning to court because things have gone wrong, court is seen as a viable option as the nature of contact changes (e.g. as children get older) because it has been for many pursuers an effective way of resolving differences around contact arrangements. Returning to court is sometimes perceived as a negative outcome (Wasoff 2006), but as circumstances change it is often inevitable that renegotiation takes place between parties. If a pursuer’s previous experience of court led to a satisfactory outcome, the same step may be willingly taken again. We did, however, find instances of pursuers being unable to progress their action, or return to court, because of the cost involved. The choices open to these pursuers were more limited.

8.22 The stress, depression and ill health many pursuers reported at the start of their actions were significantly reduced following the conclusion of the case. Some pursuers told us that they were reluctant to seek help for their fragile mental health in case the court took a poor view of their ability to cope with contact. Many solicitors told us that clients often needed emotional support when they instructed them, and that it was often difficult in this context to discern the legal issues their clients presented with.

8.23 Pursuers, who were mostly men, felt positive following the conclusion of the action, and perceived their children to be happier as a result of the agreed contact arrangements. One of the limitations of this study was that we did not have the opportunity to speak to children, and so we are unable to assess their views directly. However, previous research has indicated that conflict is a major source of dissatisfaction for children, and any reduction in this conflict
(such as that which occurs once an agreement is made in court) may go some way to improving their well-being (Wild and Richards 2003; Rees et al. 2010).

Considering the views of children and young people

8.24 Few pursuers in our study had told children about the court action or thought that the child had been told by someone else. Pursuers stated that they did not consult children as they felt they were too young or did not want to burden them, and some parents were worried that they could be accused of pressuring children if they discussed the court action with them.

8.25 We identified a range of mechanisms that exist for involving children and explored their use. Court-ordered reports appeared to be the method sheriffs relied upon most often to determine the views and welfare of the child. Use of the F9 form issued by courts for children in an action to state their views appeared limited in our study. Where it was used, there were tensions perceived by pursuers around its potential to privilege one party (usually the resident parent, who was seen to have greater influence on the child). In cases where a curator ad litem or agent had acted on behalf of children in an action, pursuers usually saw them as acting in the child’s interests.

8.26 Few children speak directly to sheriffs, but when they do pursuers may see this as a beneficial exercise. Sheriffs acknowledged the importance of their having this option in some cases, particularly in respect of older children. However, they thought that the environment of the court and chambers is unlikely to be helpful, and pointed to the risk that reconciling the wishes of children with acting in their best interests could raise unrealistic expectations. Some sheriffs do not undertake to speak to children. Sheriffs in our study were very aware that they themselves often had little experience of consulting children other than dealing with their own children and grandchildren. While courts tend to rely on reporters visiting the child’s home to gather views, pursuers in our study were concerned that the time allowed by reporters for visits to observe home environments was too short to enable them to establish the child’s best interests fully.

8.27 Most pursuers and professionals believe that the court always seeks to act to support the general welfare of children. Sheriffs emphasised the importance of their mandate to act to ensure the general welfare of children, and they are seen as maintaining this focus by other legal professionals and by pursuers, even those who disagree with their decisions. This may raise problems in terms of establishing children’s views in court actions. Pursuers’ and defenders’ views of their own and their child’s welfare, as we have observed, differed strongly. If sheriffs are to be concerned with children’s welfare first and foremost, any process of determining those views will become contested, with children becoming subjected to intentional or unintentional influence. Sheriffs recognised the risk that, in dealing with separated families characterised by conflict, their talking to a child one to one could create pressure on that child in their home environments.
8.28 The views of parties in child contact actions suggest that they may see talking to their children about the case and their wishes in relation to it as impractical, inappropriate or inadvisable, or may see this as something their child does not want. In families where the parents have not separated, the parents are likely to have become accustomed to being responsible for deciding what best supports the general welfare of their child. Separated parents may have concerns about others deciding this, or may see the court’s consultation process as one that focuses on children to the exclusion of themselves.

8.29 Very few solicitors who completed a questionnaire for our research had ever represented children. This fact is not surprising when seen in the context of previous research findings that many children would not have the knowledge or opportunity to instruct a solicitor, and are heavily dependent on parents and other adults as facilitators (Tisdall et al. 2004).

**Limitations and strengths of the study**

8.30 Because we were not able to contact defenders directly and details of defenders’ representatives were often not available or not entered on CMS until some weeks or months after a writ was booked, it was not possible to include defenders in the survey sample. This has meant that the survey sample, and thus the interview sample derived from it, provided information and views relating only to pursuers. This is a limitation since existing literature indicates that pursuers and defenders tend to offer different accounts of their contact dispute (Simpson et al. 1995; Mikelson 2008). The court process represents a different experience for each party, and the populations of pursuers and defenders map closely on to the populations of non-resident and resident parents. Our findings should therefore be read primarily as an account of pursuers’ experience in contact actions, which is why they reflect the views of male and non-resident pursuers to a large extent. Despite this limitation, since little research has been conducted on pursuers and since they initiate court actions, understanding their situations and views brings us closer to understanding why court actions come about.

8.31 The interview sample suffered 33 per cent attrition at the second wave. Given the sensitivity of the subject, interviewing during what is an enormously stressful time in people’s lives we were pleased that so many people took the trouble to speak to us for a second time, providing us with rich data on their experiences. It might have been expected that those whom we managed to contact a second time would be those who were the most pleased or displeased with their experiences at court, but our second-phase interviewees described different levels of satisfaction with their court actions. We did not, however, gain the perspectives at a second point in time of those respondents whose characteristics were more unusual (who included one non-resident mother). Further research focusing on the views of resident parents or non-resident mothers who are pursuers in contact cases, and in particular on their retrospective accounts of the process, would be a useful addition to the present study, given that there were so few in our study.

8.32 We were further limited in that we were not able to interview children. They could not be contacted through court records, and attempts to recruit family
focus groups through solicitors’ previous cases or local family services and voluntary groups were unsuccessful. This may indicate that family members find it difficult, or are reluctant, to talk in front of others about such a personal topic, particularly if a contact dispute has run its course and they do not wish to remind themselves of it. While it has been shown that children in separated families think it important that they have the opportunity to speak their minds, they may not always want to do so, or may want to do so only within their own circle of family and friends (Mayes et al. 2003). This study presents findings on contact actions from an adult perspective, and it is important to bear in mind that the children of the pursuers we surveyed and interviewed may have had different views from those of their parents or grandparents.

8.33 We have been able, through observations, interviews and conversations with court staff, to offer a description of the court process for contact actions through the Scottish courts. This information was not readily available or apparent when the study started, and so the collation of this is a major strength of this study. While the information in this study should provide a useful initial resource, mapping the court process in greater detail would be a valuable direction for future research.

8.34 The study has other strengths. Telephone interviewing proved to be a very successful and non-intrusive means of gathering rich data on a sensitive subject from geographically and demographically diverse individuals. The observations of CWHs at case study courts have greatly enriched this research. While court staff and solicitors may be familiar with these hearings as they operate in practice – and parties in contact actions will usually experience at least one – they have not previously been objectively observed, and they form a valuable yardstick as regards the views expressed in our interviews and the survey.

Conclusions

8.35 This study aimed to increase understanding of the Scottish sheriff court procedure for dealing with child contact cases, examining how it is perceived by legal professionals and how it meets the expectations of those who initiate court action. Sheriffs and solicitors see the system as providing an effective forum within which they can arrive at a negotiated solution centred on children’s needs. Pursuers were significantly distressed at the start of their court actions, but most reported satisfaction with the outcomes of the process and a change in their contact arrangements. It may be important to establish, however, whether the benefits of the court process are diminished if cases become very protracted.

8.36 Those taking action in respect of contact in Scottish sheriff courts are usually doing so to try and transform how their contact currently takes place. These findings suggest that the main business of the Scottish sheriff courts in relation to child contact is not in dealing with whether and how ceased contact can be restored, but the development of existing arrangements. The number of such actions might be reduced if separated families in a wide range of circumstances could be supported or encouraged to build flexibility into their expectations of, or arrangements for, contact. Promoting the understanding of
contact arrangements as provisional upon the changing needs of children and other family members might also have this effect.

8.37 Pursuers had rarely approached other services or sought alternative ways to resolve their dispute ahead of their court action. They tended to have seen solicitors as their first or only option, with a view to going to court to undertake adversarial procedures. A greater awareness or acceptance of other options for dispute resolution coupled with the availability of such options might encourage potential contact pursuers to view court action as a last rather than a first resort. Doing so would be consistent with the ethos of The Children (Scotland) Act 1995 that contact disputes are best resolved by mutual agreement, without recourse to court orders if possible.

8.38 Our findings in relation to pursuers’ reasons or motivations for taking contact action suggest that many of them do so in the face of significant communication problems. Pursuers sometimes undertake court action with unrealistic expectations or in the belief that their action is futile, while being under considerable stress and having strong emotional investment in a particular outcome. Making clear information or impartial advice about the processes and ethos of Scottish sheriff courts in relation to child contact available, and signposting it clearly to those considering court action, may assist such pursuers to reflect on how their reasons and objectives match those of the court and consider alternatives.

8.39 In particular, there is need for clarity as regards the framework for extending CWHs, how long the process might take and the fact that repeated hearings might be used to monitor parenting abilities. Many pursuers were unaware of or unprepared for these aspects of the court process and were resentful of them.

8.40 It is clear from the evidence presented that there is a strong culture of seeking settlement among sheriffs as well as among solicitors. Both have a clear focus on ensuring settlements are made that support the child’s welfare and, where possible, have been reached through agreement of all parties. This is consistent with the overwhelming tendency to resolve cases through a cycle of CWHs rather than by proceeding to proof.

8.41 Our findings suggest some disparity between the benefits of CWHs hailed by sheriffs and sheriff clerks and the actual participation of parties in court hearings. Although many pursuers expect and appreciate the opportunity to talk directly with the sheriff at a CWH, only half do so. This may because they have been advised not to by their solicitors. However we also observed that outbursts from parties could create considerable tension in the court room. Requiring the presence of parties at a CWH implies that their active participation is required or expected. If it is not, then it may be worth reconsidering or redefining that role, considering whether it should be assumed necessary for parties to attend even if it is likely they will play little part in proceedings.

8.42 Scottish policy and practice encourages consultation with children about their views. We found the sheriff court system to be focused on the welfare of the
child, with efforts being made to obtain children’s views through a variety of means. It is not always desirable, or possible, however, to ensure this in every case, and flexibility in approach is key to ensuring a child-centred focus. Moreover, consulting children tends to be the preserve of the court. Pursuers and solicitors rarely talk to children about their views. We would suggest that there is scope for encouraging parents to engage their children in discussions about court action in some cases, although they may need advice or support in this. The concerns of pursuers regarding whether or how their children’s views and welfare were assessed might be addressed via a greater uptake of the full range of mechanisms available to the court for this purpose, but the concerns of legal professionals suggest a need to clarify the circumstances and the age ranges in relation to which different options may be appropriate. The apparent under-use of many of the mechanisms available to the courts for consulting children suggests a need to develop and try out new ways of accessing children’s views in a contact action.

8.43 Pursuers were on the whole satisfied with their court actions. Since we were not able to access the views of defenders (mostly women) and children, this may only reflect the satisfaction of some parties. However, this satisfaction with the outcomes of court action may leave many pursuers inclined to resort to courts again if they deem it necessary, since court action has already delivered for them once.

8.44 This study, although enhancing our understanding of contact actions, is nevertheless necessarily restricted in its focus. As the research progressed, questions were raised which were outside its specific scope, raising a number of potentially fruitful areas for future research. An examination of why Scottish parents and grandparents may view going to court over child contact as something to be avoided if possible, or as something only to be undertaken as a necessity, would improve our understanding of why some pursuers take court action with no expectation of success, and would suggest how they might be encouraged to find alternative ways of addressing their contact issues. Exploring the views of defenders would enable a more rounded picture of how parties experience court action, and would provide a complementary picture of the experience of women in the court system for contact cases. In addition, research with children should be considered in order to ensure that their views of court action are represented.

8.45 Taking court action as a parent or grandparent in respect of contact with a child is an extraordinarily stressful undertaking. Those who do so see no other option, but often anticipate a conflict without being sure of achieving anything. We have observed in Scottish courts, and in the accounts of pursuers, court staff and solicitors, a system which maintains a focus on children’s welfare in such disputes and which seeks to reassure families. In some instances the court process may become lengthy, and there may be more scope for the active inclusion of parties and children. It is, however, broadly endorsed as helping to resolve contact disputes to children’s benefit, and as bringing about meaningful change in the lives of separated families.
REFERENCES


Hu, Y, Stewart-Brown, S, Twigg, L and Weich, S (2007) ‘Can the 12-item General Health Questionnaire be used to measure positive mental health?’, Psychological Medicine, Vol. 37, No. 7, pp1,005–13


Legal Studies Research Team (2003) Scottish Child Contact Centres: Characteristics of centre users and centre staff, Edinburgh, Scottish Executive


Paetsch, JJ, Bertrand, LD, Walker, J, MacRae, LD and Bala, N (2009) Consultation on the Voice of the Child at the 5th World Congress on Family Law and Children’s Rights, prepared for Justice Canada by the National Judicial Institute and the Canadian Research Institute for Law and the Family, Ottawa: National Judicial Institute


Trinder, L, Firth, A and Jenks, C (2009) “‘So presumably things have moved on since then?’: the management of risk allegations in child contact dispute resolution’, *International Journal of Law, Policy and the Family*, Vol. 24, No. 1, pp29–53


Understanding Contact Cases in Scottish Courts
Commissioned by the Scottish Government

Questionnaire for people taking court action about contact with children

STRICTLY CONFIDENTIAL
We would be very grateful if you could complete the questions in this booklet as best you can and return it to us in the pre-paid envelope provided. Everything you write will be treated confidentially and you will not be named in any report we write about the research.

SECTION ONE: About Children Who are the Subject of the Court Action

1. How many children are named in the court action you are taking? *(please enter number)*

2. Are you a parent of any of these children? *(please tick one box)*

   Yes, mother  
   Yes, father  
   No  

   If no, please go to section 3 on page 4

3. For each child named in the court action, please give their age, tick their gender, and indicate who they are living with at the moment and whether they have been told about the action.

   Age  Girl  Boy  Lives with me most of the time  Lives with someone else most of the time  Has been told about court action  Has not been told about court action

   Child 1  
   Child 2  
   Child 3  
   Child 4  
   Child 5  

   If there are other children involved in the court action, please use a sheet of paper to give us the information about them

   If any of these children have been told about the court action, who told them about it?

   Me  Other parent  Someone else *(please state)______________*

   If no children have been told, do you expect any of them to be told about the court action in future?

   Yes  No  

4. Apart from contact, what other issues is the court action about? *(please tick all that apply)*

   Divorce  
   Residence  
   Parental rights and responsibilities  
   Declaration of paternity  
   Other *(please specify)*  

Please use this space to tell us anything else about the children who are named in the court action
SECTION TWO: About Contact Arrangements

5. Thinking back over the last month, how often did the children named in this case see the parent they do not live with?

<table>
<thead>
<tr>
<th>Some of these children</th>
<th>All of these children</th>
<th>Some of these children</th>
<th>All of these children</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than once a week</td>
<td></td>
<td>About once a week</td>
<td></td>
</tr>
<tr>
<td>Once or twice last month</td>
<td></td>
<td>Not at all last month</td>
<td></td>
</tr>
</tbody>
</table>

(If not at all, go to Q8)

6. Where did this contact usually take place?

- My house
- Other parent's house
- Relative's house
- Contact centre
- Out and about
- Somewhere else (please state)

7. In the last month, have any of the children named in this case stayed overnight with the parent they do not live with?

Yes ☐  No ☐

8. Thinking back over the last month, did the children in this case have contact with the parent they do not live with other than by seeing them? (please tick as many as apply)

- Yes, by phone ☐
- Yes, by text ☐
- Yes, in another way ☐
- Yes, by letter ☐
- Yes, by email ☐
- Don't Know ☐

9. Would you say that contact arrangements during the last month have been typical for you?

Yes ☐  No ☐

If no, please explain how contact arrangements are usually different:

10. In the last month, have you been in touch with the children’s other parent?

Yes ☐  No ☐

If yes, was this about (please tick as many boxes as apply)

- Contact arrangements ☐
- Financial matters ☐
- The children's welfare ☐
- The court action ☐
- Something else ☐ (please specify)

108
11. How would you describe the usual communication about the children between you and their other parent? (please tick one box)

- The communication is very good □
- The communication is fairly good □
- The communication is adequate □
- The communication is poor □
- Communication is usually non-existent □

Please use this space to tell us anything else about contact arrangements

SECTION THREE: About Going to Court

12. Have you made an application to court about contact in relation to these or other children in the past?

- Yes □  No □

If yes, how many times before have you made an application to court regarding child contact? (please insert number in the box)

13. What are the specific child contact issues that this case is about? (please tick all that apply)

- Children having more contact with a parent □
- Children having less contact with a parent □
- Children having no contact with a parent □
- Contact with grandparents/other relatives □
- The reliability of contact arrangements □
- Holidays □
- Overnight stays □
- Who the children live with □
- Other (please describe) □

14. Why did you decide to go to court? (please tick all that apply)

- Contact arrangements have broken down □
- Concerns about the children’s wellbeing □
- A previous court ordered arrangement has failed □
- To sort out a new issue that has arisen □
- Could not reach agreement about contact arrangements by any other means □
- A change of circumstances □
- My lawyer suggested it □
- To get a court order □
- Other (please specify) □
15. How do you feel about taking court action? (please tick as many boxes as apply)

- Worried
- Looking forward to it
- Relieved
- Angry
- Wish I didn’t have to
- Pleased
- Sad
- I have no choice
- Other (please specify)

16. a) Have you been granted or do you expect to get legal aid for the court action?

- Yes – already got
- Yes – expect to get
- No

b) How much do you expect to have to pay towards this court action?

17. Did you consult or use any of the following before making this court application regarding contact? (please tick as many as apply)

- Counselling or therapy
- An advice service
- Family mediation
- Contact centre
- A different lawyer
- Women’s Aid
- Other organisation or service (please specify)

18. Looking at the list below, which of the outcomes are you hoping for? (please tick as many apply)

1. Children will have more contact with me
2. Children will have more, or less contact with someone else
3. A more practical arrangement for collecting children
4. A court order
5. Specified times for contact
6. Better communication about contact
7. An arrangement that is better for the children
8. An arrangement that is better for me
9. Other (please describe)

19. If you have ticked more than one outcome from the list above, which is the most important to you? (please insert number in the box)

20. Do you expect to achieve this outcome? (please tick one box)

- Yes, definitely
- Yes, probably
- Probably not
SECTION FOUR: About You

21. What is your date of birth? dd mm yy

22. Are you? (please tick) male ☐ female ☐

23. What is your current employment status? (please tick one box)
   - Employed full-time ☐
   - Employed part-time ☐
   - Self employed ☐
   - Unemployed ☐
   - Home maker ☐
   - Retired ☐
   - Other (please specify) ☐

24. Please state your usual occupation ________________

25. What is your current marital status? (please tick the box that most closely resembles your current situation)
   - Single ☐
   - Married – living together ☐
   - Married – separated ☐
   - Divorced ☐
   - Cohabiting ☐
   - Widowed ☐

26. Who are you living with at the moment? (please tick as many boxes as apply)
   - With a partner or spouse ☐
   - On my own ☐
   - With all my children ☐
   - With my parents ☐
   - With some of my children ☐
   - With friends/other family members ☐
   - With someone else’s children ☐
   - Other (please say with whom) ☐

27. How would you describe the usual communication between you and the children in this contact action, taking account of their age? (please tick one box)
   - The communication is very good ☐
   - The communication is fairly good ☐
   - The communication is adequate ☐
   - The communication is poor ☐
   - Communication is usually non-existent ☐
28. We would like to know things have been for you over the last few weeks. Please read the questions below and circle the answer that best applies to you.

Have you recently:

<table>
<thead>
<tr>
<th>Question</th>
<th>Better than usual</th>
<th>Same as usual</th>
<th>Less than usual</th>
<th>Much less than usual</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Been able to concentrate on whatever you’re doing?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Lost much sleep over worry?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>C. Felt that you are playing a useful part in things?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
<td>much less than usual</td>
</tr>
<tr>
<td>D. Felt capable of making decisions about things?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
<td>much less than usual</td>
</tr>
<tr>
<td>E. Felt constantly under strain?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>F. Felt you couldn’t overcome difficulties?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>G. Been able to enjoy your normal day-to-day activities?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
<td>much less than usual</td>
</tr>
<tr>
<td>H. Been able to face up to your problems?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
<td>much less than usual</td>
</tr>
<tr>
<td>I. Been feeling unhappy and depressed?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>J. Been losing confidence in yourself?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>K. Been thinking of yourself as a worthless person?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>L. Been feeling reasonably happy, all things considered?</td>
<td>More so than usual</td>
<td>About same as usual</td>
<td>less so than usual</td>
<td>much less than usual</td>
</tr>
</tbody>
</table>

Please use this space to tell us anything else about yourself or how you have been feeling lately.
29. Please choose the ethnic group which you think most closely resembles you:

<table>
<thead>
<tr>
<th>White:</th>
<th>Asian or Asian British</th>
<th>Indian</th>
</tr>
</thead>
<tbody>
<tr>
<td>White British</td>
<td></td>
<td></td>
</tr>
<tr>
<td>White Scottish</td>
<td></td>
<td>Pakistani</td>
</tr>
<tr>
<td>White Other</td>
<td></td>
<td>Bangladeshi</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mixed:</th>
<th>Black or Black British</th>
<th>Caribbean</th>
</tr>
</thead>
<tbody>
<tr>
<td>White and Black Caribbean</td>
<td></td>
<td></td>
</tr>
<tr>
<td>White and Black African</td>
<td></td>
<td></td>
</tr>
<tr>
<td>White and Asian</td>
<td></td>
<td>African</td>
</tr>
<tr>
<td>Mixed Other</td>
<td></td>
<td>Black Other</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chinese:</th>
<th>Other ethnic group:</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Thank you for completing the questionnaire. We would like to invite you to help us again in our research about going to court to sort out contact arrangements. We would like to contact you by telephone and arrange a time to talk to you, or ask you to fill in another questionnaire in a few months. Please indicate how you would be willing to help us (please tick as many boxes as needed):

- I am willing to complete another questionnaire in a few months time
- I am willing to talk to a researcher on the telephone
- I do not wish to take part in the research

If you are willing to help us further, please provide us with your contact details below:

NAME:
ADDRESS:

TELEPHONE NUMBER WHERE WE CAN CONTACT YOU:

ALTERNATIVE NUMBER:

THE BEST TIME TO CONTACT ME IS (please circle): AM PM EVE

All names and addresses will remain strictly confidential and will not be given to any other person or organisation. Please put this booklet into the pre-paid envelope provided.
Understanding Contact Cases in Scottish Courts
Commissioned by the Scottish Government

Questionnaire for people taking court action to divorce

STRICTLY CONFIDENTIAL

REF:
We would be very grateful if you could complete the questions in this booklet as best you can and return it to us in the pre-paid envelope provided. Everything you write will be treated confidentially and you will not be named in any report we write about the research.

SECTION ONE: About children

1. Do you and the other party named in your divorce have any children under 16?

   Yes ☐ No ☐

   If no, you do not need to answer any more questions. Thank you for your help.

   If yes, please continue to question 2.

2. For each child named in the court action, please give their age, tick their gender, and indicate who they are living with at the moment and whether they have been told about the action.

<table>
<thead>
<tr>
<th>Age</th>
<th>Girl</th>
<th>Boy</th>
<th>Lives with me most of the time</th>
<th>Lives with someone else most of the time</th>
<th>Has been told about court action</th>
<th>Has not been told about court action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Child 1</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Child 2</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Child 3</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Child 4</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Child 5</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

   If there are other children involved in the court action, please use the back page to give us the information about them

3. Have any of these children been told about the divorce action?

   Yes ☐ No ☐

4. What other issues is your court action about? (please tick all that apply)

   Contact with children ☐ Who the children live with ☐
   Finance, property and/or pensions ☐ Other (please specify) ☐

Please use this space to tell us anything else about the children you and the other party named in your divorce have.
SECTION TWO: About arrangements for children

5. Are you and your spouse currently living together or living apart? (please tick one box)

   - Living together
   - Living apart at the same address
   - Living apart at different addresses

   If you are still living at the same address, please go to question 13 on the next page.
   If you are living at a different address to your spouse please continue to question 6.

6. Thinking back over the last month, how often did the children you have told us about see the parent they do not live with?

   - Some of these children
   - All of these children
   - About once a week
   - Not at all last month

   (If not at all, go to Q9)

7. Where did this contact usually take place?

   - My house
   - Other parent’s house
   - Relative’s house
   - Contact centre
   - Somewhere else (please state)

8. In the last month, have any of these children stayed overnight with the parent they do not live with?

   - Yes
   - No

9. Thinking back over the last month, did these children have contact with the parent they do not live with other than by seeing them? (please tick as many as apply)

   - Yes, by phone
   - Yes, by text
   - Yes, in another way
   - Yes, by letter
   - Yes, by email
   - Don’t Know
   - No

10. Would you say that contact arrangements during the last month have been typical for you?

    - Yes
    - No

    If no, please explain how contact arrangements are usually different:
11. In the last month, have you been in touch with the children’s other parent?

Yes  [ ]  No  [ ]

If yes, was this about (please tick as many boxes as apply)

- Contact arrangements  [ ]
- Financial matters  [ ]
- The children’s welfare  [ ]
- The divorce  [ ]
- Something else  [ ] (please specify)

12. How was it decided who the children would live with? (please tick as many as apply)

- The children decided where they wanted to live  [ ]
- I decided  [ ]
- Their other parent decided  [ ]
- We both decided together  [ ]
- Someone else decided (please specify who)  [ ]

13. How would you describe the usual communication about these children between you and their other parent? (please tick one box)

- The communication is very good  [ ]
- The communication is fairly good  [ ]
- The communication is adequate  [ ]
- The communication is poor  [ ]
- Communication is usually non-existent  [ ]

14. Have you consulted or used any of the following in order to make arrangements for your children? (please tick as many as apply)

- Counselling or therapy  [ ]
- An advice service  [ ]
- Family mediation  [ ]
- Contact centre  [ ]
- A different lawyer  [ ]
- Women’s Aid  [ ]
- Other organisation or service  [ ] (please specify)
SECTION THREE: About going to court

15. How do you feel about taking court action to divorce? (please tick as many boxes as apply)

- [ ] Worried
- [ ] Looking forward to it
- [ ] Relieved
- [ ] Angry
- [ ] Wish I didn’t have to
- [ ] Pleased
- [ ] Sad
- [ ] I have no choice
- [ ] Other (please specify)

16. Have you ever made an application to court about contact in relation to these or other children?

- [ ] Yes
- [ ] No

a) If yes, how many times before have you made an application to court regarding child contact?  
(please insert number in the box)

b) If no, why not? (please tick any that apply)

- [ ] I have not needed to
- [ ] It is too expensive
- [ ] We sorted it out between ourselves
- [ ] It is too painful for children
- [ ] It’s up to parents to decide
- [ ] I didn’t want to see the other parent
- [ ] It’s up to children to decide
- [ ] Other (please state)

Please use this space to tell us about anything else about going to court.

SECTION FOUR: About You

17. What is your date of birth?  
<dd> <mm> <yy>

18. Are you? (please tick)  
- [ ] male
- [ ] female

19. What is your current employment status? (please tick one box)

- [ ] Employed full-time
- [ ] Employed part-time
- [ ] Self employed
- [ ] Unemployed
- [ ] Home maker
- [ ] Retired
- [ ] Other (please specify)
20. Please state your usual occupation __________________

21. Who are you living with at the moment? (please tick as many boxes as apply)

With my spouse          On my own
With all my children    With my parents
With some of my children With friends/other family members
With someone else’s children Other (please say with whom)
With a partner

22. How would you describe the usual communication between you and your children? (please tick one box)

The communication is very good
The communication is fairly good
The communication is adequate
The communication is poor
Communication is usually non-existent

23. Please choose the ethnic group which you think most closely resembles you.

White:    White British          Asian or Asian British          Indian
          White Scottish                Pakistani
          White Other                   Bangladeshi
Mixed:    White and Black Caribbean
          White and Black African       Black or Black British          Caribbean
          White and Asian               African
          Mixed Other                   Black Other
Chinese:  Chinese                 Other ethnic group:          Other
24. We would like to know things have been for you over the last few weeks. Please read the questions below and circle the answer that best applies to you. Have you recently:

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Been able to concentrate on whatever you’re doing?</td>
<td>better than usual</td>
<td>same as usual</td>
<td>less than usual</td>
</tr>
<tr>
<td>B. Lost much sleep over worry?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
</tr>
<tr>
<td>C. Felt that you are playing a useful part in things?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
</tr>
<tr>
<td>D. Felt capable of making decisions about things?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
</tr>
<tr>
<td>E. Felt constantly under strain?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
</tr>
<tr>
<td>F. Felt you couldn’t overcome difficulties?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
</tr>
<tr>
<td>G. Been able to enjoy your normal day-to-day activities?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
</tr>
<tr>
<td>H. Been able to face up to your problems?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
</tr>
<tr>
<td>I. Been feeling unhappy and depressed?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
</tr>
<tr>
<td>J. Been losing confidence in yourself?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
</tr>
<tr>
<td>K. Been thinking of yourself as a worthless person?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
</tr>
<tr>
<td>L. Been feeling reasonably happy, all things considered?</td>
<td>More so than usual</td>
<td>About same as usual</td>
<td>less so than usual</td>
</tr>
</tbody>
</table>

Please use this space to tell us anything else about yourself or how you have been feeling lately.
Thank you for completing the questionnaire. We would like to invite you to help us again in our research about contact arrangements for children. We would like to contact you either by telephone and arranging a time to talk to you, or by asking you to fill in another questionnaire in a few months time. Please indicate how you would be willing to help us:

- I am willing to complete another questionnaire in a few months time
- I am willing to talk to a researcher on the telephone
- I do not wish to take part in the research

If you are willing to help us further, please provide us with your contact details below:

- **NAME:**
- **ADDRESS:**

- **TELEPHONE NUMBER WHERE WE CAN CONTACT YOU:**
- **ALTERNATIVE NUMBER:**

All names and addresses will remain strictly confidential and will not be given to any other person or organisation. Please put this booklet into the pre-paid envelope provided.
Understanding Child Contact Cases in Scottish Courts

Questionnaire for lawyers

STRICTLY CONFIDENTIAL
In order to enhance our understanding of court action in relation to child contact, we are asking lawyers to give us their views. We would be very grateful if you could complete the questions in this booklet and return it to us in the pre-paid envelope provided. All the information you provide will be treated confidentially and neither you nor your firm will be personally identified in any of our reports.

SECTION ONE: About you and your practice

1. How long have you been practicing family law? (please tick one box)
   - Less than five years
   - 6-10 years
   - 11-15 years
   - 16-20 years
   - more than 20 years

2. What proportion of your own work is devoted to family law? [ ] %
   (please enter percentage figure in box)

3. Are you? (please tick)
   - Male
   - Female

4. Are you a member of the following: (please tick as many as apply)
   - CALM
   - Family Mediation Scotland

5. In addition to your training as a solicitor, have you trained or practised in any of the following?
   (please tick all that apply in both columns)
   - Family mediation
   - Marriage/relationship counselling
   - Social work
   - Collaborative law

6. Over the past year, approximately what percentage of your cases have concerned issues around contact with children? (please enter percentage figure in box) [ ] %

7. Over the last year, approximately what percentage of your family work cases have been legally aided? (please enter percentage figure in box) [ ] %
8. From your experience as a lawyer, would you say that clients with contact issues are generally similar to, or different from, other types of clients?

Similar □  Different □  Don’t Know □

If you think they are different, can you say how they are different?

9. From your experience as a lawyer, would you say that legally aided clients with contact issues are generally similar to, or different from, clients with contact issues who are not legally aided? (please tick one box)

Similar □  Different □  Don’t Know □

If you think they are different, can you say how they are different?

10. From your experience as a lawyer, would you say that cases funded by legal aid proceed in a similar way to privately funded cases?

Yes □  No □  Don’t Know □

If no, How are legally aided cases different?

11. Which of the following qualities do you see as essential or important in your day-to-day practice when dealing with cases involving child contact? (please tick one box in each row)

<table>
<thead>
<tr>
<th>Essential</th>
<th>Somewhat important</th>
<th>Not important</th>
</tr>
</thead>
<tbody>
<tr>
<td>Being an expert in the law</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Being a skilled negotiator</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Being a sensitive listener</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Knowing other family lawyers in the area</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Understanding local sheriffs</td>
<td>□</td>
<td>□</td>
</tr>
<tr>
<td>Knowledge of local support services</td>
<td>□</td>
<td>□</td>
</tr>
</tbody>
</table>
12. When you begin to negotiate a settlement with the other party, what do your goals tend to be? (please tick one box in each row)

<table>
<thead>
<tr>
<th>Always</th>
<th>Sometimes</th>
<th>Rarely</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reaching a fair settlement for both parties</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Getting the most favourable outcome for your client</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trying to settle matters without recourse to the courts</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Encouraging your client to make the first settlement offer</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

SECTION TWO: Your clients

13. Would you say that clients with child contact issues generally understand or misunderstand the legal process when they first come to you? (please tick one)

<table>
<thead>
<tr>
<th>Generally understand</th>
<th>Generally misunderstand</th>
</tr>
</thead>
</table>

If they misunderstand, what kinds of misconceptions do they have?

14. What do you think your clients with child contact issues generally expect of you as their lawyer?

15. What do you consider to be your main role in advising clients with issues of child contact?
16. How often do you find yourself encouraging a client to take a more conciliatory stand on issues and accept a compromise? (please tick one box in each row)

<table>
<thead>
<tr>
<th></th>
<th>Taking a more conciliatory stand</th>
<th>Accepting a compromise</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very often</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Sometimes</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Rarely</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Never</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

17. How often do the following situations arise in your work with clients with child contact concerns? (please tick one box for each row)

<table>
<thead>
<tr>
<th></th>
<th>Very often</th>
<th>Sometimes</th>
<th>Rarely</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td>Your client wants to talk about personal problems</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Your client needs emotional support</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Your client reaches an agreement with the other party which you believe sells your client short</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Your client is more interested in trying to get back/hit out at the other party than reaching agreement</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Your client initiates court action too soon</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Your client initiates court action too late</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Your client focuses more on his or her own needs than those of their children</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

18. Do you encourage clients who are in dispute about contact to

<table>
<thead>
<tr>
<th></th>
<th>Most of the time</th>
<th>Sometimes</th>
<th>Rarely</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td>Try to reach a settlement themselves</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Try mediation to reach a settlement</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Try other support services to reach a settlement</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Let the courts decide a settlement</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>
19. How often in contact action cases are you able to ascertain children’s views? *(please circle one answer)*

Never  Rarely  Some of the time  Most of the time  Always

20. How can lawyers best ascertain children’s views in relation to court action?

21. Have you ever represented children in a contact action? *(please tick one box)*

Yes  ☐  No  ☐  I’ve never been asked  ☐

22. Approximately what percentage of your clients with issues about contact apply to court in order to help them make arrangements? *(please enter percentage figure in box)*

Legally aided clients  ☐%  Non-legally aided clients  ☐%

23. In your experience, what are the *main* reasons clients give for initiating court proceedings in relation to child contact?

SECTION THREE: The legal process

24. How would you define a ‘good outcome’ in relation to contact proceedings in court?

25. What factors do you think are important in ensuring that contact arrangements ordered by the courts are observed?
26. In your experience, what do you see as the benefits or drawbacks (if any) of court action in respect of child contact?

27. The following statements have been made in relation to aspects of the legal process involving child contact. Please indicate whether you agree or disagree with each of these statements by circling the appropriate response on the scale provided.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Agree strongly</th>
<th>Agree</th>
<th>Neither agree nor disagree</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>Court action is only appropriate when parties have been unable to reach agreement about contact themselves</td>
<td>Agree</td>
<td>Agree</td>
<td>Neither agree nor disagree</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>It is better to reach settlements out of court than to use the court to resolve disputes</td>
<td>Agree strongly</td>
<td>Agree</td>
<td>Neither agree nor disagree</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>By the time people see a solicitor it is too late to reach a satisfactory arrangement regarding contact</td>
<td>Agree strongly</td>
<td>Agree</td>
<td>Neither agree nor disagree</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>Child Welfare Hearings assist the process of making arrangements for contact</td>
<td>Agree strongly</td>
<td>Agree</td>
<td>Neither agree nor disagree</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>The court process allows children to state their views</td>
<td>Agree strongly</td>
<td>Agree</td>
<td>Neither agree nor disagree</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>By the time people go to court it is too late to reach a satisfactory arrangement regarding contact</td>
<td>Agree strongly</td>
<td>Agree</td>
<td>Neither agree nor disagree</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>Children should have their views heard in contact disputes</td>
<td>Agree strongly</td>
<td>Agree</td>
<td>Neither agree nor disagree</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>Collaborative law is a good way of assisting people to reach agreement about contact</td>
<td>Agree strongly</td>
<td>Agree</td>
<td>Neither agree nor disagree</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
</tbody>
</table>
28. How effective do you think the current legal framework is for dealing with child contact cases? 
(please tick one box)

- Very effective
- Fairly effective
- Neither effective or ineffective
- Fairly ineffective
- Very ineffective

29. How do you think the current legal framework could be improved?

Would you be willing to help us further with this research? (please tick one response)

Yes ☐ No ☐

If yes, please supply your name:

Please use this space to make any further comments in relation to court action for child contact.

Thank you very much for completing this questionnaire. Please return it in the pre-paid envelope provided.
Understanding Contact Cases in Scottish Courts
Commissioned by the Scottish Government

Follow-up questionnaire for people who have taken court action about contact with children

STRICTLY CONFIDENTIAL
You may remember that you kindly agreed to help us with the research about going to court to arrange contact. Now that it has been some months since you made your application, we’d like to know how things are going for you. We would be very grateful if you could spend a few minutes answering some questions. Everything you tell us will be kept confidential. You will never be identified by us in any way. When you have answered all the questions, please put the questionnaire in the envelope provided and post it back to us. You do not need a stamp. Thank you very much for helping us, your answers are very important.

SECTION ONE: The Child Welfare Hearing

1. Have you attended a Child Welfare Hearing (CWH)? (please tick one answer)
   - Yes □
   - No □
   **If no**, please go to Section Two on page 3.
   **If yes**, how many CWHs have you attended? (please insert number in the box) □

   **Thinking of your first Child Welfare Hearing:**

2. How long did it last? (please insert number in the box) □ minutes

3. Did your solicitor inform you what might happen at the CWH and what questions may be asked?
   - Yes □
   - No □

4. How prepared did you feel before you went to the Child Welfare Hearing? (please tick one answer)
   - Very prepared □
   - Fairly prepared □
   - Not at all prepared □

5. How did you feel at the Child Welfare Hearing? (please tick as many as apply)
   - Nervous □
   - Relaxed □
   - Angry □
   - Intimidated □
   - Other (please specify) □

6. Did you feel that your views were taken into account by the court?
   - Yes □
   - No □

7. Did you say anything during the Child Welfare Hearing?
   - Yes □
   - No □
   **If no, why not?**
   **If yes, did people listen to what you had to say?**
     - Yes □
     - No □

8. To what extent was the hearing as you expected? (please tick one box)
   - Very like I expected □
   - Fairly like I expected □
   - Not at all what I expected □

9. Did the sheriff make an interim order? (please tick one box)
   - Yes □
   - No □
SECTION TWO: The Court Process
This section refers to the whole of your court action, not just the first hearing.

10. Which of the following events happened in your case? (please tick as many as apply)

- A curator ad Litem was appointed
- The children were represented by their own solicitor
- The sheriff spoke to the children him/herself
- We reached agreement by consensus
- A report was ordered
- I was referred to mediation
- An interim order was made

11. To what extent do you feel the children’s best interests were taken into account during the court proceedings: (please circle one response on each line)

- By the sheriff? Not at all to some extent to a great extent
- By my lawyer? Not at all to some extent to a great extent
- By me? Not at all to some extent to a great extent
- By the other party? Not at all to some extent to a great extent
- By the other party’s lawyer? Not at all to some extent to a great extent
- By the curator ad litem? (if applicable) Not at all to some extent to a great extent

12. What do you think about the length of your court case? (please tick one box)

- Too lengthy
- About right
- Not long enough

13. Have you changed lawyers since starting the court case? (please tick one box)

- Yes – within the same firm
- Yes – changed to a different firm
- No

If yes, why did you change lawyers?

14. How satisfied would you say you are with how your solicitor represents you in court? (Please circle one answer)

- Very satisfied
- Fairly satisfied
- Neither
- Fairly unsatisfied
- Very unsatisfied

15. How satisfied would you say you are with the process of going to court? (Please circle one answer)

- Very satisfied
- Fairly satisfied
- Neither
- Fairly unsatisfied
- Very unsatisfied
### SECTION THREE – Outcomes of the Court case

16. What is the current situation with your court action? *(please tick as many as apply)*

- Case disposed [ ]
- Case sisted indefinitely [ ]
- Case ongoing [ ]
- Going to proof [ ]

17. Looking at the list below, what are the outcomes in your case so far? *(please tick as many as apply)*

1. Children are having more contact with me [ ]
2. Children are having more, or less contact with someone else [ ]
3. There is a more practical arrangement for collecting children [ ]
4. I obtained a court order [ ]
5. There are now specified times for contact [ ]
6. There is now better communication about contact [ ]
7. There is now an arrangement that is better for the children [ ]
8. There is now an arrangement that is better for me [ ]
9. Other *(please describe)* ………………………………………………………………… [ ]

18. Which outcome in the list above is the most important to you? *(please insert number in the box)*

19. Please indicate whether any of the following orders have been made in this action and state whether or not you are happy with the terms of the order.

<table>
<thead>
<tr>
<th>Order made?</th>
<th>I am happy with this</th>
<th>I am not happy with this</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact order</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Parental Rights and Responsibility</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Residence order</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Specific issue order</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Divorce</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Non Harassment</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Declaration of paternity</td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
<tr>
<td>Other <em>(please specify)</em></td>
<td>[ ]</td>
<td>[ ]</td>
</tr>
</tbody>
</table>

20. Have any agreements or orders made in court been adhered to? *(please tick one box)*

- None made [ ]
- Yes – completely [ ]
- Yes – mostly [ ]
- Not very much [ ]
- Not at all [ ]
SECTION FOUR: The Costs of Court Action

21. a) Were you granted legal aid for the court action?

Yes ☐ No ☐

b) If no, how much have you paid (to the nearest pound) towards this court action? (please insert amount)

Solicitor fees £ ☐ Other (please specify) ☐

Court fees £ ☐

22. Please estimate how many days you have had to take off work in order for

Attending court ☐ days

Visiting solicitor ☐ days

Speaking to court staff, reporters or others ☐ days

Sickness or stress related to the court action ☐ days

If you had time off work, please indicate how many days the following occurred:

Loss of earnings ☐ days

Having to work extra days to catch up ☐ days

Loss of paid holiday ☐ days

23. Please estimate your annual gross income from employment over the last 12 months: £ ☐

SECTION FIVE: About Contact Arrangements

24. Thinking back over the last month, how often did the children named in this case see the parent they do not live with?

<table>
<thead>
<tr>
<th></th>
<th>Some of these children</th>
<th>All of these children</th>
<th>Some of these children</th>
<th>All of these children</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than once a week</td>
<td>☐</td>
<td>☐</td>
<td>About once a week</td>
<td>☐</td>
</tr>
<tr>
<td>Once or twice last month</td>
<td>☐</td>
<td>☐</td>
<td>Not at all last month</td>
<td>☐</td>
</tr>
</tbody>
</table>

(If not at all, go to Q27)

25. Where did this contact usually take place?

My house ☐ Other parent’s house ☐

Relative’s house ☐ Contact centre ☐

Out and about ☐ Somewhere else ☐ (please state)

26. In the last month, have any of the children named in this case stayed overnight with the parent they do not live with?

Yes ☐ No ☐
27. Thinking back over the last month, did the children in this case have contact with the parent they do not live with other than by seeing them? *(please tick as many as apply)*

- Yes, by phone □
- Yes, by text □
- Yes, in another way □
- No □
- Yes, by letter □
- Yes, by email □
- Don’t Know □

28. In the last month, have you been in touch with the children’s other parent?

- Yes □
- No □

*If yes, was this about* *(please tick as many boxes as apply)*

- Contact arrangements □
- Financial matters □
- The children’s welfare □
- The court action □
- Something else □ *(please specify)*

29. How would you describe the communication, at the moment, about the children **between you and their other parent?** *(please tick one box)*

- The communication is very good □
- The communication is fairly good □
- The communication is adequate □
- The communication is poor □
- Communication is usually non-existent □

30. How would you describe the usual communication **between you and the children** in this contact action, taking account of their age? *(please tick one box)*

- The communication is very good □
- The communication is fairly good □
- The communication is adequate □
- The communication is poor □
- Communication is usually non-existent □

31. How satisfied are you with contact arrangements at the moment? *(Please circle one answer)*

- Very satisfied      Fairly satisfied   Neither    Fairly unsatisfied  Very unsatisfied

**SECTION SIX – About You**

32. Have your wishes or expectations of contact changed as a result of going to court?

- Yes □
- No □

*If yes, how have your expectations changed?*
33. We would like to know things have been for you over the last few weeks. Please read the questions below and circle the answer that best applies to you. Have you recently:

A. Been able to concentrate on whatever you’re doing?
   - better than usual
   - same as usual
   - less than usual
   - much less than usual

B. Lost much sleep over worry?
   - not at all
   - no more than usual
   - rather more than usual
   - much more than usual

C. Felt that you are playing a useful part in things?
   - more so than usual
   - same as usual
   - less so than usual
   - much less than usual

D. Felt capable of making decisions about things?
   - more so than usual
   - same as usual
   - less so than usual
   - much less than usual

E. Felt constantly under strain?
   - not at all
   - no more than usual
   - rather more than usual
   - much more than usual

F. Felt you couldn’t overcome difficulties?
   - not at all
   - no more than usual
   - rather more than usual
   - much more than usual

G. Been able to enjoy your normal day-to-day activities?
   - more so than usual
   - same as usual
   - less so than usual
   - much less than usual

H. Been able to face up to your problems?
   - more so than usual
   - same as usual
   - less so than usual
   - much less than usual

I. Been feeling unhappy and depressed?
   - not at all
   - no more than usual
   - rather more than usual
   - much more than usual

J. Been losing confidence in yourself?
   - not at all
   - no more than usual
   - rather more than usual
   - much more than usual

K. Been thinking of yourself as a worthless person?
   - not at all
   - no more than usual
   - rather more than usual
   - much more than usual

L. Been feeling reasonably happy, all things considered?
   - more so than usual
   - about same as usual
   - less so than usual
   - much less than usual

34. Do you think that going to court has been the right thing for you and the children? (please tick as many as apply)
   - Yes – for me
   - Yes – for my children
   - No
   - Don’t know

35. Is there anything that would have made the court process easier for you?
   - Yes
   - No

   If yes, please tell us about that
36. Have you consulted or used any of the following since we last contacted you? (please tick as many as apply)

- Counselling or therapy
- An advice service
- Family mediation
- Contact centre
- A different lawyer
- Women’s Aid
- Other organisation or service

(please specify)

37. Please tell us whether you agree or disagree with the following statements by circling one answer on each line.

All things considered, it was a good thing I went to court

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Agree</th>
<th>Neither</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
</table>

I felt fairly treated by the Sheriff

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Agree</th>
<th>Neither</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
</table>

The court acted in the child’s best interests

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Agree</th>
<th>Neither</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
</table>

I would go back to court again if necessary

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Agree</th>
<th>Neither</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
</table>

Since the court action my quality of life has improved

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Agree</th>
<th>Neither</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
</table>

Since the court action the child’s quality of life has improved

<table>
<thead>
<tr>
<th>Strongly agree</th>
<th>Agree</th>
<th>Neither</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
</table>

38. We are interested in finding out more about the costs of court action. We would like to be able to contact your solicitor to find out more about the costs of your case. You will not be charged by your solicitor for this. Please indicate your consent below.

Yes – I give my consent for a researcher to contact my solicitor regarding the costs of my case

No – I do not give my consent for a researcher to contact my solicitor about the costs of my case

Please use this space to tell us anything else about your experiences of going to court about contact

Thank you for completing the questionnaire. Please put it in the envelope provided and return it to us. You do not need a stamp.
Understanding Contact Cases in Scottish Courts
Commissioned by the Scottish Government

Follow-up questionnaire for parents who have taken action to divorce

STRICTLY CONFIDENTIAL
You may remember that you kindly agreed to help us with the research about going to court. Now that it has been some months since you made your divorce application, we’d like to know how things are going for you. We would be very grateful if you could spend a few minutes answering some questions. Everything you tell us will be kept confidential. You will never be identified by us in any way.

When you have answered all the questions, please put the questionnaire in the envelope provided and post it back to us. You do not need a stamp. Thank you very much for helping us, your answers are very important.

SECTION ONE: About Current Contact Arrangements With Children

1. Thinking back over the last month, how often did you children see the parent they do not live with?

<table>
<thead>
<tr>
<th></th>
<th>Some of these children</th>
<th>All of these children</th>
<th>Some of these children</th>
<th>All of these children</th>
</tr>
</thead>
<tbody>
<tr>
<td>More than once a week</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Once or twice last month</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>About once a week</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not at all last month</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(If not at all, go to Q4)

2. Where did this contact usually take place?

- My house
- Other parent’s house
- Relative’s house
- Contact centre
- Out and about
- Somewhere else (please state)

3. In the last month, have any of your children stayed overnight with the parent they do not live with?

- Yes
- No

4. Thinking back over the last month, did your children have contact with the parent they do not live with other than by seeing them? (please tick as many as apply)

- Yes, by phone
- Yes, by text
- Yes, in another way
- No
- Yes, by letter
- Yes, by email
- Don’t Know

5. In the last month, have you been in touch with the children’s other parent?

- Yes
- No

If yes, was this about (please tick as many boxes as apply)

- Contact arrangements
- Financial matters
- The children's welfare
- The court action
- Something else (please specify)
6. How would you describe the communication at the moment about the children **between you and their other parent**? *(please tick one box)*

- The communication is very good
- The communication is fairly good
- The communication is adequate
- The communication is poor
- Communication is usually non-existent

7. How would you describe the usual communication **between you and the children** in this contact action, taking account of their age? *(please tick one box)*

- The communication is very good
- The communication is fairly good
- The communication is adequate
- The communication is poor
- Communication is usually non-existent

8. How satisfied are you with contact arrangements at the moment? *(Please circle one answer)*

- Very satisfied
- Fairly satisfied
- Neither
- Fairly unsatisfied
- Very unsatisfied

**SECTION TWO: The Court Process**

9. Which of the following events happened in your case? *(please tick as many as apply)*

- A curator ad Litem was appointed
- The children were represented by their own solicitor
- The sheriff spoke to my children him/herself
- I was referred to mediation
- A report was ordered

10. What do you think about the length of your divorce action?

- Too lengthy
- About right
- Not long enough

11. Have you changed lawyers since starting the divorce action?

- Yes
- No

If yes, why did you change lawyers?
12. To what extent do you feel your children’s best interests were considered or taken into account during the divorce proceedings? (please circle one response on each line)

By the sheriff? Not at all to some extent to a great extent
By my lawyer? Not at all to some extent to a great extent
By me? Not at all to some extent to a great extent
By the other parent? Not at all to some extent to a great extent
By the other parent’s lawyer? Not at all to some extent to a great extent

13. How satisfied were you with the court process to divorce? (Please circle one answer)

Very satisfied Fairly satisfied Neither Fairly unsatisfied Very unsatisfied

14. Please indicate whether any of the following orders have been made in this action and state whether or not you are happy with the terms of the order.

<table>
<thead>
<tr>
<th>Order made?</th>
<th>I am happy with this</th>
<th>I am not happy with this</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contact order</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Residence order</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Specific issue order</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Divorce</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Non Harassment</td>
<td>☐</td>
<td>☐</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>☐</td>
<td>☐</td>
</tr>
</tbody>
</table>

SECTION THREE: The Costs of Court Action

15. a) Were you granted legal aid for the divorce action?

Yes ☐ No ☐

b) If no, how much have you paid (to the nearest pound) towards this court action? (please insert amount)

<table>
<thead>
<tr>
<th>Amount</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solicitor fees</td>
<td>£</td>
</tr>
<tr>
<td>Other (please specify)</td>
<td>£</td>
</tr>
<tr>
<td>Court fees</td>
<td>£</td>
</tr>
</tbody>
</table>
16. Please estimate how many days you have had to take off work in order to

- Attend court: __________ days
- Visit solicitor: __________ days
- Speak to court staff, reporters or others: __________ days
- Sickness or stress related to the court action: __________ days

If you had time off work, please indicate how many days the following occurred:

- Loss of earnings: __________ days
- Having to work extra days to catch up: __________ days
- Loss of paid holiday: __________ days

17. Please estimate your annual gross income from employment over the last 12 months. £ __________

SECTION FOUR – About You

18. Have your wishes or expectations of contact changed recently?

Yes [ ] No [ ]

If yes, how have your expectations changed?

19. Have you consulted or used any of the following since making this court application? (please tick as many as apply)

- Counselling or therapy [ ] An advice service [ ]
- Family mediation [ ] Contact centre [ ]
- A different lawyer [ ] Women’s Aid [ ]
- Other organisation or service [ ] (please specify) [ ]
20. We would like to know things have been for you over the last few weeks. Please read the questions below and circle the answer that best applies to you. Have you recently:

<table>
<thead>
<tr>
<th>Question</th>
<th>better than usual</th>
<th>same as usual</th>
<th>less than usual</th>
<th>much less than usual</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Been able to concentrate on whatever you’re doing?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B. Lost much sleep over worry?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>C. Felt that you are playing a useful part in things?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
<td>much less than usual</td>
</tr>
<tr>
<td>D. Felt capable of making decisions about things?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
<td>much less than usual</td>
</tr>
<tr>
<td>E. Felt constantly under strain?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>F. Felt you couldn’t overcome difficulties?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>G. Been able to enjoy your normal day-to-day activities?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
<td>much less than usual</td>
</tr>
<tr>
<td>H. Been able to face up to your problems?</td>
<td>More so than usual</td>
<td>same as usual</td>
<td>less so than usual</td>
<td>much less than usual</td>
</tr>
<tr>
<td>I. Been feeling unhappy and depressed?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>J. Been losing confidence in yourself?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>K. Been thinking of yourself as a worthless person?</td>
<td>not at all</td>
<td>no more than usual</td>
<td>rather more than usual</td>
<td>much more than usual</td>
</tr>
<tr>
<td>L. Been feeling reasonably happy, all things considered?</td>
<td>More so than usual</td>
<td>About same as usual</td>
<td>less so than usual</td>
<td>much less than usual</td>
</tr>
</tbody>
</table>

21. Is there anything that would have made the court process easier for you?

Yes □ No □

If yes, please tell us about that.
22. Did a dispute about contact with children or where the children should live arise during your divorce action?

Yes ☐ No ☐

If yes, please continue to Question 23 below.

If no, please go to Question 30 on page 8.

SECTION FIVE: Arranging Contact at Court

23. Have you attended a Child Welfare Hearing (CWH)?

Yes ☐ No ☐

If no, please go to question ? on page ?

If yes, how many CWHs have you attended? (please insert number in the box) ☐

Thinking of your first Child Welfare Hearing:

24. How prepared did you feel before you went to the Child Welfare Hearing? (please tick one answer)

Very prepared ☐ fairly prepared ☐ not at all prepared ☐

25. How did you feel at the Child Welfare Hearing? (please tick as many as apply)

Nervous ☐ relaxed ☐ angry ☐ intimidated ☐ other (please specify) ☐

26. Did you feel that your views were taken into account by the court?

Yes ☐ No ☐

27. Did you say anything during the Child Welfare Hearing?

Yes ☐ No ☐

If no, why not?

If yes, did people listen to what you had to say?

Yes ☐ No ☐

28. To what extent was the hearing as you expected? (please tick one box)

Very like I expected ☐ Fairly like I expected ☐ Not at all what I expected ☐
29. Please tell us whether you agree or disagree with the following statements by circling one answer on each line.

<table>
<thead>
<tr>
<th>Statement</th>
<th>Strongly agree</th>
<th>Agree</th>
<th>Neither</th>
<th>Disagree</th>
<th>Strongly disagree</th>
</tr>
</thead>
<tbody>
<tr>
<td>All things considered, it was a good thing I went to court</td>
<td>Strongly agree</td>
<td>Agree</td>
<td>Neither</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>I felt fairly treated by the Sheriff</td>
<td>Strongly agree</td>
<td>Agree</td>
<td>Neither</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>The court had my child's best interest at heart</td>
<td>Strongly agree</td>
<td>Agree</td>
<td>Neither</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>I would go back to court again if necessary</td>
<td>Strongly agree</td>
<td>Agree</td>
<td>Neither</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>Since the action my quality of life has improved</td>
<td>Strongly agree</td>
<td>Agree</td>
<td>Neither</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
<tr>
<td>Since the action, my child's quality of life has improved</td>
<td>Strongly agree</td>
<td>Agree</td>
<td>Neither</td>
<td>Disagree</td>
<td>Strongly disagree</td>
</tr>
</tbody>
</table>

30. We are interested in finding out more about the costs of court action. We would like to be able to contact your solicitor to find out more about the costs of your case. You will not be charged by your solicitor for this. Please indicate your consent below.

Yes – I give my consent for a researcher to contact my solicitor regarding the costs of my case

No – I do not give my consent for a researcher to contact my solicitor about the costs of my case

Please use this space to tell us anything else about your experiences of going to court.

Thank you for completing the questionnaire. Please put it in the envelope provided and return it to us. You do not need a stamp.
Understanding Child Contact Cases in Scottish Courts

Schedule for interviews with pursuers undertaking court action

Remind re purpose of study
Remind that you have read questionnaire answers
Participation is voluntary & anonymous – stop any time, don’t have to answer
Check that they are happy to be recorded
Ask if they have any questions

Reasons for court action
Can you talk me through me how you came to decide on court action?
• How long has dispute been going on?
• Mention what they said on questionnaire
• Explore what part the children’s views/interests shaped the decision
• Ask about questionnaire answers on telling child
What, if any, alternatives did you perceive?
Did you try anything else first? [Check questionnaire – services etc.] Tell me about that.
How did you go about finding a solicitor? Why?
What did your solicitor try before it went to court?
Do you have other family members with an interest in the case outcome? [Explore]
Did you talk to friends and family about your decision? [Explore who and why] What did they say?

Contact arrangements
Are contact arrangements still as you described on the questionnaire? [Remind them; talk through any developments].
Is communication with the other parent still as you described on the questionnaire? [Remind them; talk through any developments; explore history].
What problems are there for you with the way your contact takes place just now?
How do your children feel about it? How does their other parent?

Expectations of court action
How did your solicitor advise you about taking court action? Was that what you expected them to tell you?
Did you consider defending yourself?
What did you want to happen as a result of the case at that point?
What did they think could be achieved?
[Explore any difference with outcomes ticked in section 3; gather more detail on what’s ticked]
If granted legal aid – How important was it to you to get LA?
If awaiting legal aid - Have you been granted LA yet? What will that mean for you?
If not – What are the financial implications of the court action? Why aren’t you legally aided?
What’s it like waiting for the first hearing to take place?
What happened first?

Experience in court
Can you talk me through your first time in court [in this action]? [Describe courtroom, atmosphere etc.]
What advice did your solicitor give you beforehand?
Did you feel prepared enough for the hearing?
What were you trying to communicate? Did you succeed?
What did you get asked? By who?
What was said about you? By who?
Did anything surprise/disappoint you? Tell me…
How did you feel before? During? After?
Were any of your children present?
   If so:
   Did they have their own representative?
   How were they prepared for the court hearing? Was that what they needed?
   How did they take part?
   How did other people in court behave towards them?
   What do you think it was like for them?
   How did you feel about them taking part
   If not:
   Why not?
   Were you glad or disappointed?
   How were their views represented?
   What would it have been like if they were there?
What did other family members [relatives; the other party] make of it?
Have there been any other hearings yet? [discuss these]

Perceptions of court staff & legal professionals
What were they like during the hearing?
What do you feel their attitude was in general?
What do you feel their attitude was to you in particular?
How did they explain things to you?
How did they handle things?
[Use questions to try and establish what they thought legal staff were trying to achieve]

Immediate and long-term outcomes
Has the court action made any difference to you or others so far? Describe…
How do you feel now that you are at this stage?
How do you think your children/the other parent feel about it?
What are you having to think about in relation to the court action?
Have you talked to children about court action since it started? Tell me about that…
Have any problems arisen? Describe. Did you foresee these?
How do you see the case going next?
What do you think the eventual outcome of the case will be? Will you be satisfied with that? Will other family members? [Compare with expectations at start]
What will the impact of that be on your family life? And that of others?

Opinion
How have you been satisfied with the process of going to court so far?
How has it made you feel? [health & state of mind]
What’s been good about it? What’s bad?
Is there anything about it that could be made better or different? How?
What/who has supported you through this? What/who else could have?
Understanding Child Contact Cases in Scottish Courts

Schedule for interviews with pursuers undertaking court action to DIVORCE

Remind re purpose of study – CONTACT ISSUES
Remind that you have read questionnaire answers
Participation is voluntary & anonymous – stop any time, don’t have to answer
Check that they are happy to be recorded
Ask if they have any questions

Reasons for court action
Was contact an issue in your decision to pursue divorce action? If so, in what way, and how long ago did problems start?
- Mention what they said on questionnaire
- Explore what part the children’s views/interests shaped the decision
- Ask about q’aire answers on telling child
Did you try any services in relation to contact issues [check q’aire]?.
How did you go about finding a solicitor? What did you look for?
Did your solicitor try anything in relation to contact before it went to court?
Do you have other family members with an interest in contact/case outcome? [Explore]

Contact arrangements
Are contact arrangements still as you described on the questionnaire? [Remind them; talk through any developments].
What problems are there for you with the way your contact takes place just now?
Is communication with the other parent still as you described on the questionnaire?
[Remind them; talk through any developments; explore history].
How do your children feel about it? How does their other parent?

Expectations of court action
What did you want to happen regarding contact when you decided to divorce?
[Explore any difference with outcomes ticked in section 3; gather more detail on what’s ticked]
How did your solicitor advise you about contact issues in your divorce action? Was that what you expected them to tell you?
Did you consider representing yourself?
What did your solicitor think could be achieved regarding contact?
Has a Child Welfare Hearing been set or taken place?
If so, what’s it like waiting for the first hearing to take place?
What happened first?

[IF CWH TAKEN PLACE] Experience in court
Can you talk me through your first time in court [in this action]? [Describe courtroom, atmosphere etc.]
What advice did your solicitor give you beforehand?
Did you feel prepared enough for the hearing?
What were you trying to communicate? Did you succeed?
What did you get asked? By who?
What was said about you? By who?
Did anything surprise/disappoint you? Tell me…
How did you feel before? During? After?
Were any of your children present?
   If so:
Did they have their own representative? How were they prepared for the court hearing? Was that what they needed? How did they take part? How did other people in court behave towards them? What do you think it was like for them? How did you feel about them taking part
If not: Why not? Were you glad or disappointed? How were their views represented? What would it have been like if they were there?

What did other family members [relatives; the other party] make of it? Have there been any other hearings yet? [discuss these]

[IF CWH TAKEN PLACE] Perceptions of court staff & legal professionals
What were they like during the hearing? What do you feel their attitude was in general? What do you feel their attitude was to you in particular? How did they explain things to you? How did they handle things? [Use questions to try and establish what they thought legals were trying to achieve]

Immediate and long-term contact outcomes
Has the court action made any difference to your contact situation? Describe… How do you feel now that you are at this stage? How do you think your children/the other parent feel about contact? What are you having to think about in relation to the court action? Have you talked to children about court action since it started? Tell me about that… Have any problems arisen in dealing with contact? Describe. Did you foresee these? How do you see the case going next? What do you think the eventual outcome of the case will be as regards contact? Will you be satisfied with that? Will other family members? [ Compare with expectations at start] What will the impact of that be on your family life? And that of others?

Opinion
How have you been satisfied with the process of going to court so far? How has it made you feel? [health & state of mind] What’s been good about it? What’s bad? Is there anything about it that could be made better or different? How? What/who has supported you through this? What/who else could have?
Understanding Child Contact Cases in Scottish Courts

Schedule for follow up interviews with pursuers undertaking court action

Remind re purpose of study

Participation is voluntary & anonymous – stop any time, don’t have to answer

Check that they are happy to be recorded

Ask if they have any questions

Recap first interview. Then:

Outcomes

What has changed for you and your family since the last interview?

Explore: contact times

staying over

relationships with children, other parent, other family.

significant factors [jobs, schools, where everyone’s living, health]

Are the changes a good or a bad thing?

What has not changed?

Is that a good or a bad thing?

Do you think things will last as they are?

How do you feel about your contact situation compared with how you felt last time?

How does your child/children?

How does their other parent feel?

The action

[only ask if court case was ongoing at last interview:]

Can you talk me through what’s been happening with it since we last spoke?

Explore: further hearings

whether went-going to proof

reports

measures and decisions from Sheriff

changes of Sheriff

Is the court case still going on?

If not, why/how did it finish?

What was the outcome? Was that what you wanted to achieve?

What stage have things reached in it?

Has it gone/did it go the way you expected it would?

[If children old enough] did their views play a part in the court’s decisions? How?

[ask all]

If orders or agreements were made, have they been stuck to? Tell me about that.

[If sisted indefinitely] Do you think the case will stay closed?
Costs
What has the action cost you in legal fees? What impact has that had?
What would the impact have been if you had/hadn't been granted Legal Aid?
Have there been other costs to you? [explore]
Have you had to take time off work due the court action? How much time? [check re court appearances & travel, solicitor visits, court orders – contact centres, reporter visits, mediation etc.] What impact did that have?
Has the action created demands on your time in your own life? Tell me about that. [If new relationship/other children involved, explore]
Has there been any effect your health from the court action? Tell me about that.
Did the court action have an impact on your children’s time?

Perceptions of court staff & legal professionals
What do you feel their attitude was in general?
What do you feel their attitude was to you in particular?
How did they explain things to you?
How did they handle things?
Did they understand the situation well?
[Use questions to establish what they thought legals were trying to achieve]

Reflections
How do you feel about the court action now?
To what extent would you say the way things are now is a result of the court action?
What was good about the process of going to court?
What could have been better?
Do you think any differently now about being a parent?
What/who has supported you through this? What/who else could have?
Would you go to court again if you had to?
How would you advise someone else that was thinking of going to court over contact?
Where would you like things to go from here?
Do you think that will happen?
Anything else you’d like to add or ask?
Understanding Child Contact Cases in Scottish Courts

Interview guide for sheriffs
Introduce & explain research – offer leaflet
Explain confidentiality
Explain voluntary nature of participation
Ask permission to tape record – explain how data will be used.
Any questions? Give contact details.

How Sheriffs make decisions about cases
What information/indicators are most important to you when considering a new case involving contact?
What differences, if any, are there between what you have to consider regarding craves for contact and for residence?
What issues do you have to take into account (and how) if a case does not go ‘through on a nod’?
How does contact enter as an issue/crave if not on the initial writ? What would prompt you to add contact to a crave regarding contact?
What do you look for in an ordered report? How do you find those you get – where do the good ones come from, how easy is it to order the kind of report that meets your requirements?
How do you identify issues & consider options at options hearing?
How does the consideration of DV affect your decisions?

Their approach and how that relates to the disposals they choose
What broad aim or aims do you work towards in child contact cases?
Who else within the process shares those aims – how are other people’s different?
What would lead you towards the various options at a CWH:
  • Refer parents to mediation
  • Ask for a report on the background
  • Appoint a curator to ascertain the voice of the child
  • Make an order
How would each of these options further the aims you’ve just outlined?
In what circumstances will you issue a final interlocutor/dismiss case/issue order of absolvitor?
Do you try to stay with a case or not? Why? How easy is that – what obstacles?
How does your approach compare with that of other sheriffs?
How does the consideration of DV affect your approach in a contact case, or the disposals you choose?

Involving children and any challenges this may pose
How is taking the child’s point of view discussed at a CWH?
How have you gained the child’s point of view in the past? What works best for you? What difficulties have you encountered in doing so?
How does the child’s age affect your ascertainment of their views? How do they decide whether to get the children’s views? Do parents have any influence over this? What are the practical or ethical issues involved in obtaining children’s views? Does age make a difference?
Have children had their own representation in cases you have presided over? What differences did that make?
What concerns and desires do you find that children in contact cases have regarding their situation?
How easy do they find it to express their views? What if anything might make it easier?

Effectiveness of the current legal framework for dealing with child contact cases
How effective do you find the current legal framework in dealing with child contact cases?
What strengths/flaws does it have? How might it be improved?
What differences, if any, has the introduction of Child Welfare Hearings made to how you deal with, or are able to deal with, contact cases?
What differences are there for you between initial and subsequent CWHs?
What aspects or factors prolong a case:
- At the initial hearing
- At subsequent hearings
Do CWHs speed things up? How?
What’s gained or lost by a contact case going through quicker?

Helping parents to make arrangements for children
How do you apply the principle of minimal intervention with parents in contact cases?
What, if anything, do you try to communicate to parents & representatives? Why?
How is a case different if grandparents are involved as a party or parties?
What might you see as a positive outcome/s?
What barriers are there to obtaining a satisfactory outcome?
How do parents’ aims and objectives compare with those of the court?
How is the satisfaction of all/most parties & children most likely to come about?
Where might you refer parents to for help or advice? Are these options sufficient in your view? What works best? What else, if anything, is there a need for?
What factors are associated with compliance/failure to comply?
How do you deal with non-compliance? Is there anything that might improve how you are able to deal with it? [How easy is it to establish non-compliance?] What are the prospects for future compliance?

Advantages and disadvantages of undertaking court action for these parents
What differences do you see among parents coming to court?
What motivates them to take court action in respect of contact?
What is the experience of the court process like for parents? for children?
What support do parents receive? What should they receive?
What are the advantages for parents of undertaking court action in respect of contact?
Which parents, are most likely to gain these advantages (or in which circumstances?) What are the disadvantages?
Which parents/in which circumstances are most likely to suffer these disadvantages?
How aware are parents of these advantages/disadvantages at the start of a case?
How satisfied are parents and children with the outcomes of court cases?

Any thoughts/suggestions/questions?
Thank you.
Understanding Child Contact Cases in Scottish Courts

*Interviews with Sheriff Clerks Officers - schedule*

Your background
Any specific training

**Dealing with parties & solicitors**
Can you talk me through the lodging of a writ?
What do you have to check for, or make parties/representatives aware of?
How often, and when, might you deal with parties directly rather than through a representative?
Can you talk me through the documentation issued and received by court:
  • before initial hearing?
  • between subsequent hearings at each stage of a case?
How are you involved in getting reports? What problems can there be in this process?
How aware are parties of court practices and requirements?
What are implications for you in parties representing themselves or undefended cases?
Do issues arise between representatives & court? What sort of thing? How are these dealt with?

**Hearings**
What do you have to prepare for CWHs hearings
What factors do you have to take into account?
What is your role within a hearing?
Can you talk me through what your involvement in an hearing might be?
How do you liaise with sheriffs/other court staff before and after hearings?
What differences are there for you between CWHs and other hearings in a contact case?
In other ordinary causes?

**Outcomes**
What are the implications for your work of the decisions a sheriff makes in the case?
How does your involvement in a case terminate?
What causes cases to re-open?

**Broader issues**
How is understanding maintained between yourself & local family practitioners?
What are your aims and priorities in handling contact cases?
What if any aspects of your work have the purpose of representing the views/interests of the child in a case? How do you achieve this?
What do you have to watch out for/ be careful of?
What are you working towards in processing contact cases?
What are the main problems that emerge?
What prolongs a case?
What makes a case difficult/easy?
What might improve procedures?
Any practices they would like to see introduced/abandoned?

*In relation to all the above –*
How do contact cases relate to their work as a whole – special considerations?