

Making contact happen or making contact work?

The process and outcomes of in-court conciliation

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Executive Summary

In-court conciliation is a form of dispute resolution used in the early stages of contested private law proceedings, such as contact applications. The purpose of conciliation is usually to help parties negotiate an agreement about the disputed matter without the need for further legal intervention. Conciliation is typically a brief intervention on court premises involving CAFCASS officers, although the precise form varies considerably between courts. There are now plans to make in-court conciliation available in all courts as part of the Private Law Programme.

This report presents the findings from a study on the Process and Outcomes of In-Court Conciliation, funded by the Department for Constitutional Affairs.

Aim of the study

The aim of the study was to identify the *overall* effectiveness of in-court conciliation in contact cases as well as the *relative* effectiveness of three contrasting models of conciliation. In other words the study sought to identify whether conciliation 'works' and which model 'works' best. Effectiveness or 'working' was measured by the following indicators:

- agreement rate
- satisfaction with the agreement
- satisfaction with the process overall and with specific process components
- agreement durability
- relitigation and further professional intervention
- change (or improvement) in contact patterns, satisfaction with arrangements, contact problems, shared decision-making and parent and child wellbeing

Methodology

The main study consisted of a longitudinal quantitative survey of parents who had attended in-court conciliation. Parents were initially recruited at conciliation appointments at the three different sample sites. The response rate was approximately 67%, resulting in a baseline sample of 125 mothers and 125 fathers. A baseline telephone interview was conducted within a few days of the conciliation appointment. At follow up, between six and nine months later, 70% of the baseline sample were re-interviewed. The parent study was supplemented with qualitative interviews with district judges, lawyers and CAFCASS officers from the three areas.

The three models or approaches to conciliation

Conciliation varies widely across the country. The three approaches to conciliation included in this study were as follows:

- Essex – parents attend a scheduled one hour appointment with the CAFCASS officer then report back briefly to a district judge (low judicial control)

- Principal Registry of the Family Division (PRFD) – the district judge leads negotiations in a court room with lawyers actively negotiating (high judicial control)
- Suffolk/Cambridgeshire (Cambs) – the district judge initiates the process in chambers, parties go out to negotiate with CAFCASS then report back (mixed)

Findings: The Nature of the Cases

- Families were facing significant difficulties, with fraught or tenuous contact, conflicted and distrustful parental relationships, very limited shared decision-making, high levels of dissatisfaction with arrangements and numerous contact problems. This translated into high levels of adult and child psychological distress.
- The PRFD sample included a higher proportion of ‘hard’ cases, the Cambs sample the fewest. On most measures there were no differences by area.
- Resident and non-resident parents differed on satisfaction with arrangements, some specific contact problems and reports of how children were coping. Otherwise both groups agreed that relationships were poor, that decision-making was rarely shared and had similar concerns about the other parent’s lack of reliability and limited parenting skills.

Findings: Immediate outcomes

- Consistent with previous research, the overall agreement rate was very high, with 76% of parents reporting a full or partial agreement.
- The agreement rate varied significantly by area, with Essex parents reporting the highest agreement rate and PRFD the lowest.
- The model, and not the characteristics of the case, determined the agreement rate.
- The agreements reached were for a restoration and/or extension of the quantity of contact. Not surprisingly, non-resident parents were significantly more satisfied with the agreements than resident parents.
- Overall, only 62% of parents were satisfied with the agreements they had reached. Parents reaching a full agreement were more satisfied than parents reaching a partial agreement. Parents who did not reach any agreement were least satisfied overall.

Findings: Perceptions of the In-Court Conciliation Process

- The average (median) length of the conciliation session was 45 minutes.
- Only half of the sample were satisfied with the conciliation process overall, with PRFD parents least satisfied.
- Resident parents reported less choice about entering the process, more anxiety beforehand, more tension in the meeting, less able to say all they wanted to and more likely to report being pressured into an agreement by their ex-partner.
- The professionals with whom parents have most contact – lawyers, family court advisors and district judges at the PRFD – received fairly high ratings in terms of impartiality and helpfulness, particularly from non-resident parents.
- Parents perceive the process as almost exclusively focused on negotiating a timetable for contact. Parents reported little educational input to help them work together. Only a handful of parents said the meeting helped them understand their ex-partner’s perspective.
- There is tremendous uncertainty about whether, and how, to involve children in the process. Parents are as divided about what role children should play in the

process as professionals.

Findings: Outcomes Six Months Later

- The very brief intervention had quite a marked impact. At follow up only a fifth of agreements had not worked at all, most agreements were intact or had been extended, most cases were closed with low re-litigation rates, many more children were having increased contact, more parents were satisfied with the quantity and quality of contact and parents and children were doing better than at baseline.
- Parents whose cases were closed at follow up scored better on all measures than parents where the court battle was ongoing or had been resurrected.
- The other important factor is parental relationship quality at baseline – conciliation appears to work best with what were the less entrenched cases.
- Despite these successes there are some significant problems. Although the re-litigation rate was low only a third of cases were closed after a single conciliation session. Parental satisfaction and parent and child wellbeing did improve from baseline to follow up, but overall levels remain low. Only 59% of parents whose cases were closed were satisfied with arrangements.
- More importantly, the conciliation session and the adoption of new contact arrangements had little impact on parental relationship quality, shared decision-making and contact problems. It is these issues, rather than the mere quantity of contact, that are most likely to impact on children's adjustment. The quantity of contact alone was not related to child wellbeing in this study.

Conclusions

The specific type of in-court conciliation does make a difference to both parental satisfaction with the process and the agreement rate with the low-judicial control and mixed schemes producing the best results, controlling for case characteristics.

In-court conciliation is effective in reaching agreement and ensuring contact but, *regardless of model*, has limited impact on the key coparenting factors that will make contact work for children. This in itself should not come as a surprise. The service that parents receive is very brief and is not designed to address relationship issues.

We identified significant problems with the conciliation process, again regardless of model. In each of the three areas the courts had adopted a standard case processing approach to achieve agreement and contact. Whilst the standard model could be appropriate for 'standard cases' the approach was ill-suited to dealing with cases raising serious risk issues and could be coercive. The rapid processing of cases and focus on settlement also meant that children were excluded from the process or risked becoming responsible for decisions.

Recommendations

In-court conciliation does have much to offer as a dispute-resolution process in contact cases. However, in-court conciliation is not suitable for all cases nor is it likely to be sufficient by itself in many cases. Our findings suggest that a low judicial control or mixed form of conciliation should be available in all courts but within the context of a differentiated case management system offering a appropriate range of services. This would involve triage including rigorous risk assessment, followed by conciliation (or referral to mediation), together with a coparenting programme, child programme and post-order support where necessary.