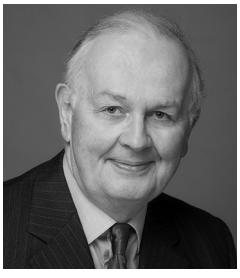
Articles

Early Interventions pathway: parental separation and children

Hamish Cameron, *Consultant Child Psychiatrist (Retired), St George's Hospital, London*
Caroline Willbourne, *1GC Family Law, Barrister and Deputy District Judge, CFC*
Glynis Wright, *Head of Practice, Glynis Wright & Co Family Solicitors*



Hamish has advised in most types of children's High Court case as an expert witness. At family lawyers' meetings UK-wide, Hamish recommends Early Interventions to achieve out-of-court agreements, sustain children's family ties and save costs. He is a former professional adviser to Coram and Childlink; and a former trustee of NYAS, Caldecott Foundation and Royal National Children's Foundation.

Caroline is a member of 1GC Family where she practises in financial remedy work and private law children matters, including some international cases. She has a busy mediation practice and also sits as a Deputy District Judge. She undertakes private FDRs. She enjoys attending and speaking at Family Law conferences, both in the UK and abroad.

Glynis Wright is a 16 year qualified family lawyer and the founder of Glynis Wright & Co, a specialist family law firm offering mediation and collaborative law as well as traditional family law services in the Midlands. Her firm won Law Firm of the Year (Small) in the National Law Society Excellence Awards in 2018. She is also the President of the Leicestershire Law Society.

Post-separation parenting is a major child-welfare issue. In 2018–19, it involved Cafcass in the lives of 65,378 children in s 8 applications under the Children Act 1989. This is 10.5% of that year's total live births for England. Some 36% of parents separate before their children reach sixteen. Too many children grow up detached from the other half of their family to become adults with impaired personal relationships.

Our court system adjudicates late, long after family problems have become entrenched. An increasing crisis in family law forces us to ask how we can improve practice and engage with families early.

A problem: no guidance

Section 8 disputes include a ruling on the 'best interests' length and frequency of parenting time; but, under the current system, neither Cafcass nor any other agency has authoritative pre-court advice on this issue.

This central omission has continued almost wholly unremarked since it was inherited by Cafcass from the Family Court Welfare Service in 2001.[1] Minister of State for Justice Lucy Frazer MP QC confirmed in 2018:

> 'I have asked to check the position and can confirm Cafcass does not issue guidance on the amount of parenting time to be apportioned as a starting point in specific types of case.'[2]

This fact is evident from Cafcass' website, its Operating Framework and its literature. It was confirmed by Cafcass' long-standing CEO.[3] It has not been acknowledged by any Family Justice Review since the 1990s, the current review included. This causes unintended consequences for parents and professionals.

A problem for separating parents

The topics that preoccupy separating parents are: when can I see my children? And how much should I let him/her see our children? As there is no authoritative pre-court guidance for separating parents about their child's need to continue to see both parents' families, no guidance is contravened when a parent imposes arrangements that do not protect a 'both-parents' family life. Possibilities range from a 50:50 sharing of a child's time, down to virtual extinction of child-parent relations. Where on this scale should the parents aim? The absence of guidance draws parents into court even though it is widely agreed that family litigation is bad for children.

A problematic legal framework

Family lawyers are well aware that the rebuttable presumption in law – the child should always have contact – has a flaw: the amount of 'contact' is not legally defined. At a 2018 international family law conference, Andrew Bridgen MP reminded his audience that legal 'contact' includes any contact at all, even just one postcard a year. He continued:

> '. . . a parent who loses all significant contact with a child has not lost anything to which they had even a presumptive entitlement. Nor has the child. The reality may be, their loss is colossal: life-changing, and corrosive . . . Parents are routinely told these cases are not about their rights, but the child's rights. Yet, when we unwrap that bundle, it is just about empty. Under our current system, the child's birthright is this: all significant contact with a parent can be eliminated for no significant reason.'[4]

Minimal contact commonly precedes all contact ceasing. Andrew Bridgen's analysis applies equally to grandparents, cousins, aunts, uncles and friends. Breaking off all relationships with the other half of the family in the absence of a good reason cannot be good for a child.

The remedy: an alternative pathway – 'Early Interventions'

These problems are addressed by an alternative pathway that ensures early intervention. Authoritative guidelines – informed by those in wide usage overseas, but adapted to our circumstances – can be prepared by the Family Justice system in collaboration with its child development experts.

An 'Early Interventions' pathway ['EI'] would use the 12-week period after receipt of an application to convey these guidelines to parents, and deliver where practicable a consent order with child arrangements attached. In an EI system, that is the goal for normative cases in all their shapes and forms. Most cases do not reach the first hearing. EI systems work well to protect, promote and plan for the child's future

1 See eg CS to the Rt Hon Lord Irvine 29/3/2000 (the initial guidelines then said to be in last-minute preparation did not proceed); INPOWw to Anthony Hewson OBE [Cafcass's first chair] 2/2/01, http://tinyurl.com/y4of7pkz.
2 2/8/18, Lucy Frazer MP QC to Andrew Bridgen MP; MOJ Ref ADR59080. http://tinyurl.com/y5q7xsjs.
3 Andrew Bridgen MP, 18/9/17 ref NL 5034; Anthony Douglas CEO, 5/10/17 ref 6605; AB, 16/10/17; https://bit.ly/35kr5W9.
4 '*Moving Upstream*', 30 August 2018, EAPAP, Chair Sir Paul Coleridge. http://tinyurl.com/y5bvdpsw.

wellbeing. EI provides a problem-solving pathway for parents as they work together to restructure their child's family life before the first hearing.

EI: the effect on public understanding

The calming effect of an EI pathway is felt long before parents reach a Family Court hearing.

Judicial authority is central to EI systems. Authoritative Family Court guidelines that include levels of parenting time become known, not least via the internet, to every agency/individual advising those seeking this information. Barristers, solicitors, mediators, support agencies, counsellors, self-help groups, commentators and other advisors will spread the word. Citizens Advice Bureaus will be able to issue authoritative factsheets to parents who ask, 'What happens about the children if we separate?' Consistent guidelines would be available to, and would reach, parents from the moment a separation is in the air. At an international conference in 2002, Dame Margaret Booth DBE encapsulated the position thus:

> '. . . the most striking point is how much we have to learn from the pre-hearing Information and Mediation approach adopted by other countries, and from their consensus . . . on the quantum of contact. It is a shame that our country does not easily learn from what other jurisdictions have done successfully for so long.'[5]

EI: when proceedings are issued

EI's out-of-court procedures may sound familiar, but its core processes – education classes and conciliation sessions – differ from the existing Separated Parenting Information Programmes ('SPIPs') and Mediation Information and Assessment Meetings ('MIAMs') in two vital respects. First, these core processes are court-controlled, briskly scheduled and in the right order (SPIPs first, MIAMs after). Second, they include court-acknowledged guidelines on the parameters of parenting time likely to be in a child's best interests.

The general EI pre-hearing flowchart[6] is:

(1) Application received: separated parenting guidelines sent out by return; hearing date listed at 12 weeks.

(2) By 10–14 days: urgent hearings where needed (DV/abuse or neglect/other challenges).

(3) By 4–6 weeks: all parents attend a group separated parenting education class.

(4) By 8–10 weeks, if needed: individual couples attend a focused parenting-time session with a specialist conciliator.

(5) At 12 weeks: if/when a Consent Order (exhibiting a 6–12 months child arrangements plan) is filed and approved, the hearing is vacated.

Parents can 'exit the system' after the Separated Parenting education class, on an approved Consent Order. Disputes without a substantive issue that are not settled before the first hearing are decided at the first hearing. Only a minority proceed to litigate in the ordinary way, calling on Cafcass' expertise or other specialist services as appropriate.

EI systems re-position the Family Court's input 'upstream' into a joined-up pathway delivered out-of-court by court-approved educators and conciliators. These non-legal professionals work within the context of a legal hearing date listed at 12 weeks. EI provides structured predictability for parents and lawyers. Minds are concentrated. Ordinary separations are not left to grow into extended and traumatic court contests. Instead, families are reshaped before the first hearing by a well-considered judicially approved Consent Order, whereupon the hearing is vacated.

5 '*International Perspectives: Early Interventions – a framework for contact*' 27 March 2002, Chair Dame Margaret Booth DBE, p 118/162 http://tinyurl.com/y5knzyht.

6 https://bit.ly/2zCAXyJ.

The EI court retains judicial oversight throughout. Either parent is at liberty to ask for an urgent hearing.

The effect of guidelines

From day one, the Family Court guidelines sent to each parent act as a stabilising requirement to retain the relationships that the child has with each parent's families prior to separation.[7] The guidelines give parents this gateway advice:

> '. . . in the absence of good reason, you cannot have a court hearing until you have attended a 'separated parenting' education class and then a conciliation session and written your own parenting-time plan for your child. Meanwhile you must continue to keep your child in contact with their family on both sides, for the next 12 weeks, until the Family Court hearing date listed.'

The Guidance installs the needs and rights of the child at the centre of these cases. Parents know from the outset that planning their child's future is more a health and social issue than a legal one. At the group Separated Parenting education class, and at the joint conciliation session if required, parents gain further awareness of what type of order the Family Court is likely to make.

Urgent cases: safeguarding and emergency applications

The EI pathway provides for emergency applications. Should either parent allege domestic violence, substance misuse, child physical/sexual/emotional abuse or neglect, or other grave child protection concern, an urgent court hearing is listed for 10–14 days ahead. These serious allegations require early determination; reductions in the judicial workload enable early hearings. If the court finds the allegation is well-founded and serious, the case may be passed to a higher court. If the facts show the child is not at risk, the EI pathway is resumed.

A well-managed EI court keeps the same day clear each week for these 'at short notice' hearings. Promptly-held emergency applications have been reported to resolve allegations that previously used to hang over cases for years. Child protection is enhanced. EI recognises that it harms a child to be separated, without good reason, from life with a fit and willing parent whom they love and trust.

All parents: the group 'separated parenting' class (4 weeks from issue)

This mandatory single four-hour class provides practical information on the emotional foundations of good quality post-separation parenting and healthy ways to protect the child from conflict. Each parent attends separately in a group of about 30: 15 women and 15 men confronting a common predicament. They learn from each other. Examples of parenting plans that many other families have used successfully are shown and discussed. Parents who might find communication difficult see that, along with their child's other parent, they are far-and-away the best people to agree the arrangements. They are encouraged towards agreement to 'exit the system'.

Resistant parents who do not file a Consent Order in the weeks after the class progress to the next stage.

If needed: a single couple parenting-time conciliation session (8–10 weeks from issue)

Involvement of a professional conciliator at this critical time can make all the difference. Parents who are still at odds can be guided towards a parenting-time schedule that they may accept. The parents make the decision; the conciliator uses successful parenting-time examples to focus on their child(ren)'s need to retain a life with both parents. The voice of the child is referenced. Parents are reminded that they need to identify a

7 This guidance can be issued as a 'Standing Temporary Order'. See pp 46–50, '*EI – Towards a Pilot Project, Seminar Report*' http://tinyurl.com/y6656zsc

substantive issue if the case is not to be summarily decided at the impending hearing.

The hearing at 12 weeks

Consent Orders agreed prior to the hearing are submitted to the Family Court administrator. If approved and stamped, they become the formal Final Order. Should the judge have doubts, the hearing listed at 12 weeks takes place. If the parents cannot agree, the judge either makes the appropriate order with child arrangements attached, or refers the case forwards for litigation in the usual way. The EI court acts as a hub, providing access to other services as necessary.

The judicial role

The EI judge's role is both judicial and facilitatory. As in the Family Drug and Alcohol Courts, he/she watches over the work of the Family Court professionals and provides judicial determinations at key points if required. EI honours the principle that the law should interfere as little as possible in family life: both parents are empowered by EI to agree their child(ren)'s parenting plan without litigating. Court hearings and the Family Court judge become a less-used distant backstop called upon only when necessary.

Conclusion and recommendation

The current overburdensome demands for private law hearings compel us to radically reorganise practice so that parents are guided effectively. The EI pathway, widely used overseas, is an educational, out-of-court, conciliatory journey that, in most cases, produces a Consent Order. Parents are signposted along a pathway that significantly reduces the incidence of high-conflict contested cases and the cost to the public purse. Most importantly, EI results in a large increase in the number of children enjoying a balanced restructured family life after separation.

Early Interventions pilot

In 2003, one year after the first international conference on Early Interventions was held in London, the late Dame Joyanne Bracewell DBE observed:[8]

> '. . . this is the way forward . . . it would be incomprehensible if the pilot project did not receive official sanction. The pilot[9] does not involve a huge investment; it would achieve savings in money and court time.'

A small pilot took place in 2004 at the Inner London Family Proceedings Court, led by a skilled and committed judge. Even though the authorities funding the project adopted the EI pathway without including the element of judicial guidelines,[10] some positive outcomes resulted.

The current financial cutbacks justify a fresh pilot being trialled and evaluated at a single designated court. The requisite guidelines, comparable to those long in use abroad, can readily be developed;[11] it will be straightforward to redeploy the existing skilled SPIPs and MIAMs teams. The initiative also requires a new court website and new explanatory court leaflets, as well as leadership from a judge/magistrate who is well-informed and wholly committed. Both Dame Margaret Booth DBE and the late Dame Joyanne Bracewell DBE gave their support to EI as long ago as 2002; it was reiterated by the President of the Family Division in 2018.[12] The central authorities are considering alternative pathways to reform private family law. A judicially-led pilot of the EI pathway, as outlined in this article, would be the next step.

8 Lincoln's Inn Seminar, '*EI – Towards a Pilot Project*', 15/7/03 http://tinyurl.com/y6656zsc, p 60.
9 See '*EI – Proposal for a Pilot Project: the best interests of children in divorce cases*'.
9 http://tinyurl.com/yys4h4b
10 See *Family Law* [2004] Fam Law 835 November 'Family Resolutions v Early Interventions'
11 See the 2002 conference generally (Footnote 5) on guidelines from abroad. In this jurisdiction, the 1997 AFCWO guidance (http://tinyurl.com/y4t3sfw2) outlines modest levels of contact by age-band, linked to the indispensable 'good reason' principle at end-page 2; and the 2009 Midland Guidelines (https://bit.ly/2Y4BtzA) illuminate many issues other than quantum in a single page.
12 Keynote Address, NAGALRO AGM, 12/3/18