

Institution: University of Exeter
Unit of Assessment: Law
Title of case study: Post-separation parenting - informing and enhancing policy and practice
<p>1. Summary of the impact</p> <p>Three studies by Trinder have helped shape national policy and informed practice on three related issues regarding arrangements for children after parental separation. The three issues are whether or not there should be a statutory presumption of shared time, the scope and shape of education programmes for separated parents and whether additional punitive sanctions would assist with the enforcement of court orders for contact. Trinder's three studies have built a strong evidence base and have had an impact by:</p> <ol style="list-style-type: none"> 1) helping to shape national policy on shared care, parent education and enforcement; 2) informing professional decision-making on shared care, parent education and enforcement; 3) stimulating public debate about shared care.
<p>2. Underpinning research</p> <p>How effectively parents are able to work together post-separation is a key influence on children's subsequent adjustment. However, achieving this level of cooperation poses significant challenges for individual parents as well as for the state and family justice system. Since joining the University of Exeter's Law School as Professor of Socio-legal Studies in September 2009 Trinder has undertaken three complementary studies addressing how the legal and policy framework regulating post-separation parenting might better support cooperative relationships.</p> <p>The first study (Trinder 2010a,b) explored whether or not there should be a statutory presumption of shared time (alternatively called 'shared care' or 'shared residence'), whereby children spend roughly equal amounts of time with each parent post-separation. The study, in the summer of 2010, was a desk-based review of research into shared care arrangements for children. Trinder's review was the first to appraise and synthesize the findings of a large body of international research, with a particular focus on recent large-scale Australian studies, and to consider the implications for policy and practice in England and Wales. Key findings included establishing that the quality of the relationship between parent and child, rather than simply the amount of contact between them, was the crucial factor in improving outcomes for children; identifying major risk factors in practices such as regular overnight stays for children under four; and showing that a statutory presumption could have the unintended consequence of expanding shared care amongst high conflict parents where shared time is associated with poorer outcomes.</p> <p>The second study explored the effectiveness of a new parent education programme designed as a tool to facilitate contact and cooperative parenting. Education programmes for separated parents are used extensively overseas, but a power to enable courts to refer litigating parents to a programme was only introduced in England and Wales under the 2006 Children and Adoption Act. In early 2011 Trinder led a multi-disciplinary team commissioned by the Department of Education (DfE) at a cost of £140,000 to undertake the first national evaluation of Parenting Information Programme (PIPs). This major study included a telephone survey of 600 PIP and non-PIP attendees and qualitative interviews and focus groups with parents, lawyers and mediators. It found that parents and professionals were very positive about the aims, content and delivery of the programmes, and that PIP attendance had a modest impact on the number of children having contact (Trinder et al 2011, Smith & Trinder 2012). However there was no reduction in costs, conflict or subsequent court action compared with those who did not attend PIPs. To address this, the researchers made a range of recommendations about the content and availability of the programme, including extending the programme to parents before they reached the stage of going to court; including a specific behavioural skills element within the syllabus; and more effective linkage between educational and dispute-resolution elements of the programme.</p> <p>The third study examined the very difficult problem of cases where one parent is reported to be in breach of a court order for contact. The 2006 Children and Adoption Act enabled courts to order a parent to undertake community service for breaching a court order. However, this new enforcement sanction has been rarely used. In mid 2012 the Government suggested that a tougher approach was needed and announced a consultation on further sanctions. There was, however, no</p>

existing research on the nature and extent of non-compliance, nor why courts were avoiding using the existing sanctions. Trinder therefore sought funding of £71,000 from the Nuffield Foundation to examine how courts approached enforcement cases. This study was based on file analysis of a national sample of all 215 enforcement applications made in a two month period in 2012. It used the electronic case records held by the Children and Family Courts Advisory and Support Service (Cafcass). Trinder was the first external researcher to be given access to these records. The study found that the popular stereotype of the implacably hostile mother was misleading; most enforcement cases involved mutual parental hostility, safeguarding issues or teenagers refusing contact; courts typically used punitive approaches when they were appropriate; sufficient punitive sanctions existed but courts needed a wider range of educational and therapeutic tools to help both parents implement orders effectively (Trinder 2013, Trinder et al 2013).

3. References to the research

Key outputs:

1. Trinder, L. (2010a) Shared Residence: A Review of Recent Research Evidence. *Child and Family Law Quarterly*, 22: 475-498.
2. Trinder, L. (2010b) Shared Residence: A Review of Recent Research Evidence. *Family Law*, 40: 1192-1197.
3. Trinder, L., Bryson, C., Coleman, L., Houlston, C., Purdon, S., Reibstein, J. and Smith, L. (2011) *Building bridges? An evaluation of the costs and effectiveness of the Separated Parents Information Programme (PIP)*. London: Department for Education.
4. Smith, L. & Trinder, L. (2012) Mind the gap: Parent education programmes and the family justice system. *Child and Family Law Quarterly*, 24: 428-451.
5. Trinder, L. (2013) Enforcing child contact orders: are the family courts getting it right? Final briefing paper.
<http://www.nuffieldfoundation.org/sites/default/files/files/enforcement%20briefing%20paper%20final.pdf>
6. Trinder, L., Hunt, J., Macleod, A., Pearce, J. & Woodward, H. (2013) *Enforcing contact orders: Problem-solving or punishment?* University of Exeter.

Key grants:

- Trinder, L. (PI) and Bryson, C., Coleman, L., Houlston, C., Purdon, S., Reibstein, J. and Smith, L. *Evaluation of the Parenting Information Programme*, Department for Education. December 2010-April 2011 £139, 890.
- Trinder, L. (PI) and Bryson, C., Coleman, L., Houlston, C., Purdon, S., Reibstein, J. and Smith, L. *Evaluation of PIP Plus*, Department for Education. April 2012-Dec 2013 £99,448.
- Trinder, L. (PI) *Enforcement of contact orders*, Nuffield Foundation. December 2012-July 2013 £71,563.

4 Details of the impact

(i) Impact on policy

All three studies have had a **direct influence on government policy**.

Shared time/shared care: A key policy question has been whether to amend the Children Act 1989 to include a statutory presumption of shared time following parental separation. Trinder was a key player in this debate, making oral and written submissions to national-level policy reviews based on her 2010 research. Evidence of Trinder's impact on the policy process starts with the Interim Report^{1,9} of the Family Justice Review (FJR) a committee of inquiry set up by government. The Review recommended against a "substantially shared or equal time" presumption, citing Trinder's CFLQ findings that the cooperation required to make shared contact work in high conflict families could not be created by statute "*Trinder suggests that research indicates early or pre-existing parent or family characteristics predict subsequent pathways and outcomes. [footnote to Trinder 2010a] Co-operative parents tend to develop flexible shared care arrangements with positive outcomes. High conflict parents tend to develop rigid arrangements, often through litigation, that are associated with poorer child adjustment and lower levels of child satisfaction. It appears that if parents share parental care fully before separation, they are more likely to do so successfully after separation. The panel sees that there are limits as to what legislation can achieve if this*

approach to parenting is not taken prior to separation." (at para 5.73, emphasis added). The Final Report² of the FJR reiterated the recommendation against a time-based presumption. Trinder's CFLQ findings were summarised and directly cited again at para 4.19 alongside a verbatim excerpt from Trinder's written submission at para 4.24. Under pressure from fathers groups, the Government rejected the FJR's recommendation against a new presumption. However, whilst the Government is still planning to introduce a presumption about continuing parental "involvement", it accepted the arguments set out in the FJR against a time-based presumption. The influence of Trinder's work in bringing to the attention of policy-makers the relevance of the Australian experience and the importance of quality rather than quantity is evident in para 62 of the Government's response to the FJR³ "*The Government is mindful of the lessons which must be learnt from the Australian experience of legislating in this area, which were highlighted by the Review and led them to urge caution. We will therefore consider very carefully how legislation can be framed to avoid the pitfalls of the Australian experience, in particular that a meaningful relationship is not about equal division of time, but the quality of parenting received by the child*".

PIPs: Trinder's evaluation study of PIPs has been highly influential in **shaping government policy** on the availability and content of these programmes. The eight main recommendations of Trinder's 2011 study, including the need for voluntary self-referral, more effective and systematic screening; clearer aims and more focus on skills development and the need for a suite of programmes, were reproduced verbatim in the Final Report² of the FJR in November 2011 (paras 4.87-4.90). The FJR report noted that the recommendations were being considered by government (at para 4.88), but also added its own strong endorsement "*These recommendations warrant careful consideration by government*" at para 4.89. The Government's Response³ to the FJR in February 2012 accepted all the Trinder/FJR recommendations on PIP, quoting Trinder's evaluation as evidence for the use of PIP as a pre-court or alternative to court option "*Evaluation evidence suggests that the programme enables parents to better understand and discuss the issues they have; and that PIPs work best when parents participate early in the dispute resolution process (rather than when proceedings have progressed further in the courts). PIPs are not currently available to parents until their dispute reaches the court stage. The Government will consider how to make such programmes available to parents as part of pre-court dispute resolution processes*" (at p74). The government also accepted the FJR recommendation that judges should continue to be able to refer parties to PIP, again quoting the Trinder evaluation in support "*The Government accepts this recommendation. Research has shown the Parenting Information Programmes have been valuable to parties to a court case at all stages of their dispute and the Government agrees that judges should retain the power to order parents to attend these courses where the judge feels that it is appropriate*" (at p74). As a result of these recommendations there have been a number of further developments: (a) the PIP programme is now being made available to parents on a self-referral basis rather than being restricted to litigants¹⁰; (b) the number of court referrals to PIP has risen. The 2011/12 Cafcass Annual Report at p19 (<http://bit.ly/1b1tlOu>) reports that 18,279 adults attended PIP in 2011-12 compared to 13,000 in 2010-11. The cost was £2.83 million; (c) Trinder's recommendations also led to the development in four pilot areas of an expanded PIP known as PIP Plus incorporating the 2011 evaluation recommendations for a more behaviourally-informed programme and better integration between education programme, mediation and court. Trinder was commissioned by DfE to evaluate the new programme with funding of £99,000 for 2012/13.

Enforcement: Trinder's research has been **instrumental in diverting the government** from introducing further punitive sanctions and towards exploration of an enforcement-specific parent education programme. Trinder held two telephone briefings about the emerging findings with the responsible MoJ civil servants⁴ between November and February 2012. Trinder emphasised that few cases appeared to be classic implacably hostile parents requiring punitive sanctions, rather courts needed more educational/therapeutic options to address conflict. In February 2013 the government dropped its proposal for further sanctions.⁵ On 13th April Trinder submitted an interim written briefing paper to MoJ, at their request, based on analysis of nearly half the target sample of cases. The paper reiterated the findings on case type and the need for educational/therapeutic rather than punitive interventions. The briefing was cited as support for the government's new policy direction by the Children's Minister during the House of Commons Committee stage of the Children and Families Bill on 14th April "*the Government's decision not to introduce further new*

sanctions is consistent with their interim findings on the enforcement work they have researched. They also conclude that the Government's proposal to develop an enforcement-specific case assessment and intervention pathway is a positive step forward.... they demonstrate that we have taken a mature approach to resolving the problem of enforcement.⁶ MoJ and Cafcass are now discussing an enforcement-specific parenting programme or 'e-PIP' as a direct response to Trinder's recommendations.^{4, 10}

(ii) Impact on public debate

Trinder has been a **leading figure in the national debate** on the shared care issue, arguing against amending the Children Act 1989. In February 2012, *The Guardian* published an article by Trinder critical of the government's decision to reject the FJR's recommendation for no new presumption (<http://bit.ly/1b1cwDr>); the article generated 464 comments on *The Guardian* website. Trinder debated the issue with the Children's Minister, Tim Loughton, on Radio 4's *Today* programme on 13th June 2012 (<http://bbc.in/1ilu7T1>), was guest contributor on Radio 5 Live's *Your Call* on the same day and was quoted at length on the BBC website (<http://bbc.in/1iluixN>).

(iii) Informing professional decision-making

Trinder has been an invited speaker at a series of meetings and presentations involving researchers, policy-makers and practitioners. She was invited to present her research on shared care drawing on the 2010 CFLQ paper at the Judicial College on eight separate occasions between November 2010 and February 2012 to audiences of 20-30 District and Circuit judges each time. The course evaluations included comments such as "*Very thought-provoking about effects of shared residence in practice. Good opportunity for discussion*". In February 2012 the Course Director HHJ Sally Williams specifically directed family judges to Trinder's presentation (uploaded on the Judicial College website) in an Editorial in the Judicial College Family E-letter⁷. The purpose of the E-letter is to "alert family judges, both full-time and part-time, to those cases and pieces of legislation that are relevant to everyday practice and likely to affect what they do in court". The E-letter is sent to all family judges in England and Wales.

Trinder also presented her research on PIPs to the Judicial College on two occasions, again to groups of 20-30 District and Circuit Judges. Her widely distributed briefing on enforcement (Trinder 2013) generated an unsolicited email from a leading High Court Judge who commented that "It is extremely interesting and immensely useful".⁸

5. Sources to corroborate the impact (numbers below refer to superscript numbers above))

1	Report reference	Family Justice Review, Interim Report, March 2011. https://www.justice.gov.uk/publications/policy/moj/2011/family-justice-review
2	Report reference	Family Justice Review, Final Report, November 2011. https://www.gov.uk/government/publications/family-justice-review-final-report
3	Report reference	Ministry of Justice/Department for Education (2012) The Government Response to the Family Justice Review. Cmnd 8273. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/177097/CM-8273.pdf
4	Ministry of Justice	[name supplied] Policy Lead on Family Mediation, Shared Parenting and Administrative Divorce, Family Justice Division.
5	Report reference	Ministry of Justice (2013) Co-operative parenting following family separation: proposals on enforcing court-ordered child arrangements. http://bit.ly/1aAG8Le
6	Hansard	HC Deb 14 March 2013 col 293 http://bit.ly/HG5dHN
7	Judicial College	E-letter (Family) Editorial, February 2012.
8	Email evidence	[name supplied] High Court Judge, email 11 th July 2013.
9	Family Justice Review	[name supplied] Chairman of the Family Justice Review and Family Justice Board.
10	Cafcass	[name supplied] National Commissioning and Partnerships Manager, Cafcass.