

Study finds English and Welsh family courts not discriminating against fathers

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Dr. Maebh Harding. Credit: University of Warwick

There is no evidence that family courts in England and Wales are discriminating against fathers because of gender bias, a new study by the University of Warwick and funded by the Nuffield Foundation has found.

Dr Maebh Harding, from the School of Law, reviewed almost 200 case files from 2011 and concluded that contact applications by fathers were in fact "overwhelmingly successful".

Her report, co-authored with Dr Annika Newnham from the University of Reading, paints a generally positive picture of the role of the County Courts in resolving child law disputes at the time of the study.

However, it does raise some concerns that equal or near equal care was being used as a way to ensure adult fairness, rather than achieving the best arrangement for the children.

The report also questions the impact of recent cuts to legal aid, which the authors say will remove court as a viable option for many parents.

Dr Harding said: "Whilst it's true that mothers were usually the primary care giver in contact applications, this was simply a reflection of the social reality that women are more likely to take on the role after a relationship breakdown.

"But there was actually no indication of any bias towards mothers over fathers by the courts; in fact we established there was a similar success

rate for mothers and fathers applying for orders to have their children live with them.

"And although the overall number of residence orders made for mothers was higher than those made for fathers, this was because a large number of such orders were made for mothers as respondents in cases where the father sought contact.

"Transfers of sole residence were rare as the courts sought to preserve the status quo and where they were ordered they were disproportionately likely to be transfers from mum to dad and to feature welfare concerns and children's services involvement."

The report concludes that family courts were only being used by parents as a last resort and the vast majority of cases were resolved without the need for a contested final hearing. Contrary to popular belief, proceedings did not result in any amplified or entrenched conflict between the parties involved.

But cuts to legal aid are threatening the public's access to the system, the researchers warn.

"Going to court with legal advice to resolve disputes between parents about their children is now out of the financial reach of most parents, although funding is still available for mediated resolution," added Dr Harding.

"We have concerns that the wholesale diversion of these cases from court through cuts to legal aid will mean that parents will agree to unsafe arrangements where risk factors are not appropriately managed or will be unable to reach agreement about having contact with their children."

A number of cases were found during the study where the use of equal

or near equal care patterns alarmed the authors.

They wrote: "Serious child welfare concerns were expressed in four of these cases, one of which also had proven domestic violence. Given the families' histories and parents' problems it was difficult to feel confident that these were lasting solutions in the children's best interests."

The report highlights the importance of evidence based assessment of recent reforms to the family justice system to ensure that children's interests are properly protected. The full report is available to download at <http://www.nuffieldfoundation.org/share-care>.

Provided by University of Warwick

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