

Private law cases that return to court: a Cafcass study

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Contents

Executive summary.....	2
Background.....	5
Aims and methodology.....	5
Findings: Scale and patterns of cases returning to court.....	8
Findings: Circumstances behind returns to court.....	10
Conflicted adults.....	13
Safeguarding concerns.....	16
Change in life circumstances.....	19
Child's wishes and feelings.....	21
Conclusion.....	24

Executive summary

This report sets out findings from a small-scale study on private family law cases that return to court, based upon data held within our administrative dataset. It was undertaken within the context of a 20% rise in private law applications over the past two years and a wish within Cafcass and the wider family justice sector to understand what lies behind the rise and identify cases which may benefit from an innovative approach or being safely resolved out of court.

The aims of the study were to ascertain the scale and patterns of cases returning to court, and the circumstances behind such returns. We made use of quantitative data relating to over 40,000 private law applications received in 2016-17; and of primarily qualitative data relating to case file reviews of a sample of 100 private law return cases received in April 2017.

Scale and pattern of returns

- Of the 40,599 applications received in 2016-17, 30% were returns, meaning at least one previous application had been made in respect of the eldest child.¹
- The majority of returns involved just one previous case, but just under one-third of returns had two or more previous cases. One child had been subject in eleven cases between 2005 and 2017.
- 63% of returns involved an application made within two years of the previous case being closed to Cafcass. Cases that had returned to court more times had a higher proportion which returned within two years.

Circumstances behind returns

Within the 100 cases studied in more detail, we found that returns did not always involve a breakdown in child arrangements: some involved practical reasons to vary child arrangements, and others involved addressing specific issues or progression of arrangements. And we found that not all returns were 'repeats': just under half concerned a new issue that had not been raised during previous proceedings.

We used four categories to code the main reason for the return to court (see below). It is important to stress that this categorisation reflects what we take to be the *principal driver* of the return, not the sole reason. The inclusion of a safeguarding category should not be taken to imply that there were no safeguarding concerns in other categories, but rather that these did not drive the application. The obvious example to illustrate this point is conflicted adult cases where there was commonly a risk, or even evidence, of emotional harm derived from chronic conflict. Many returns were triggered by the complex interplay of two or more factors, such as conflicted adult cases featuring allegations of the child being harmed by the other party and/or competing accounts of the child's wishes. Of the 100 cases analysed:

1. Conflicted adults were the principal driver of 39 cases and therefore the most common reason for cases returning. Some included allegations and counter-allegations of harm to the child by parties which, in these cases, were found by professionals to have little substance. Compared to the other three types, conflict cases were more likely to return to court within two years, and more likely to entail a repeated issue, meaning the matter that led to the new

¹ See Methodology section on page 5 for details on how this figure was determined.

application was substantially the same as the one that drove the previous application. They were, however, marginally more likely to end at the first hearing – perhaps reflecting a court view that this was substantially a re-hearing of matters previously addressed.

Distinguishing between types of conflict,² just five of the 39 conflict cases were temporarily dysfunctional, leading us to speculate that such cases are more likely to be resolved in the first set of proceedings or out of court. Sixteen cases were significantly conflicted and 18 stuck in conflict: in many such cases the court was effectively micromanaging family life, seeking to resolve (sometimes in extraordinary detail) precisely when the child should spend time with a parent, how long a holiday should last, practicalities around travel, and the role of partners or wider family.

It would be an oversimplification to see these returns as ‘failures’ of family justice – it was surprising that some arrangements sustained as long as they did in light of the history and reciprocal animosity. However, it does seem that where enduring parental antipathy triggers applications (coded as significantly conflicted or stuck – 34% of our sample) courts are more able to promote behavioural than attitudinal change. Arrangements therefore remain fragile, and breakdowns can be triggered by seemingly small incidents, as the adults involved remain unable to communicate or negotiate effectively, returning to court to resolve the issue. The resulting question is whether it is possible for such cases to be identified at an early stage and diverted from court into intensive resolution work.

2. Safeguarding concerns raised by parties were the primary driver of 36 cases returning to court. There was a broad range of welfare matters, including escalating aggression at handover, abuse or neglect of the child, and parental substance abuse. Some applications were triggered by new child protection allegations; others by the applicant’s view that serious problems of mental illness, alcohol abuse, or perpetration of domestic abuse had now abated – a view not always shared by the Family Court Adviser (FCA) or other professionals involved. Where there are histories of such risks, challenges remain over how a child can spend time with a parent in ways that are safe and beneficial. We noted that the local authority had been involved recently in 17 of the cases: in some it recommended or supported the application for changed arrangements as a protective measure; in others its withdrawal seemed to trigger new applications, as presumably the arrangements no longer felt safe.

3. A change in life circumstances drove 16 cases. Such changes featured in many other categories, for example where stuck parents were unable to negotiate a child moving to a new school. What distinguished these was our view that a return to court would have been unlikely without the change, such as one party moving a substantial distance away or the death of an adult the child lived with. Such cases, almost without exception, featured new rather than repeated issues. Many returned over five years after the preceding case – another distinguishing feature.

4. The child’s wishes and feelings were the principal driver in nine cases. Four of these returned to court between five and ten years after the previous case – an indication of the child being more able to articulate his or her wishes, or even ‘vote with their feet’. The concerns raised by a parent or the child included being unhappy with the conditions in the home of the

² Drawn from the Cafcass High Conflict Pathway (2017) which elaborates on Brian Cantwell’s categories (2007): (a) ‘temporarily dysfunctional’, (b) ‘significantly conflicted’; (c) ‘stuck conflict’. See more on page 15.

parent with whom the child spent time, being shouted at, and feeling prevented from staying in touch with the resident parent.

Divided loyalties were a common feature. While some cases were characterised by a sense that it was hard for the child's voice to be properly heard, the opposite problem was manifest in others: the child appeared to be granted too much power, to the point that she or he was burdened by a fear of causing distress to one or both parents. The work of an FCA with the child seems particularly important in such circumstances, in helping the court identify child's views and the risks derived from decision-making being 'delegated' to him or her.

Policy and practice implications

Our analysis provides a number of tentative conclusions:

1. The type of return cases which might most beneficially be considered for alternative dispute resolution options are the conflicted adult cases. These are the most numerous, accounting for 39% of return cases. They return to court more swiftly than other types and often contain repeated issues. The impact on the child is influenced by a host of factors (for example the duration of the conflict, degree of animosity, the child's age and resilience) but there is a serious risk of emotional harm.
2. There is a strong argument that safeguarding concern cases should be before the court in order that welfare matters are addressed.
3. A complication – one of many – is that conflicted adult cases commonly include allegations and counter-allegations of harm to children. Often the work of the FCA reveals that these appear to have little substance and form a rehashing of previous concerns. However, out-of-court resolution would need to distinguish reliably between allegations that pose a risk to a child's safety and welfare and those that do not.
4. The following questions may be of assistance in considering whether and how conflict cases can be diverted from court:
 - Can the intervention address likely features of: a parental need for micromanagement of aspects of family life; a belief that the authority of the court is required to resolve the matter; a possibly unconscious investment in continuing the conflict; possible emotional harm to the child?
 - Should diversion be provided at the point a parent seeks to make the application or is it possible to pre-empt applications by providing assistance towards the conclusion of proceedings? This could address common trigger issues found in this study (such as implementation of new arrangements, holidays abroad, new partners, changing work patterns, and moving house).
5. Changes in life circumstances and children's wishes and feelings cases account for fewer cases but they might be beneficially diverted from court to alternative services which allow the child to express freely his or her wishes and feelings, such as child-inclusive mediation.

Background

This is one of four small-scale studies completed by Cafcass each year based on data available within our administrative dataset. Cafcass has experienced an increase of nearly 20% in private law cases across the past two years, after an initial reduction in applications following the introduction of the Child Arrangements Programme in 2014.³ Work is ongoing to identify the reasons behind the increase, as well as to identify cases which may benefit from an innovative approach or from being safely resolved out of court.

This study contributes to this work by inquiring into the extent to which Cafcass private law caseloads feature a high proportion of 'repeat' cases (cases returning to court involving the same families and the same issues) and into the circumstances behind these.

Aims and methodology

The study aims to ascertain:

1. The scale and patterns of cases returning to court (quantitative analysis)
2. The circumstances behind such returns (qualitative and quantitative analysis).

1. The scale and patterns of cases returning to court

All children involved in private law cases received in 2016-17 were traced to identify whether they had been involved in a previous case (including both private or public law), which was counted as a 'return'. Data was reported to provide a descriptive profile of the following:

- The number and percentage of cases which were a return to court
- The number of times a case has returned
- The number and ages of children involved in such cases
- The type of application made in the most recent return to court
- The duration between the two most recent cases (relating to Cafcass involvement)

The data was taken from the Cafcass electronic case management systems (ECMS and CMS). As large scale administrative databases, these are subject to data entry errors. The study is a snapshot of the database from September 2017, and shows private law applications made in 2016-17 on Cafcass cases which have a child linked to them, identifying whether the child was involved in any previous Cafcass case. Limitations include:

- Cases are linked via people using 'person records': if the child involved in the case has not been linked on the database to the child's person record already held, it will not show as a return case. This is part of the administrative process when a new case is received, but a small minority may be subject to administrative errors meaning that a new person record is created rather than linking to the previous person record.

³ [Numbers of private law cases received by Cafcass](#) by month (mean average): 3886 in 2013-14; 2843 in 2014-15; 3118 in 2015-16; 3382 in 2016-17; 3606 in 2017-18 to date.

- Returns were identified by tracing previous cases linked to the eldest child in the latest case, meaning previous cases involving only the younger child are not accounted for.
- Returns reflect only those cases held on Cafcass electronic databases (CMS was introduced in 2007 and holds some case records from legacy databases before this).
- Some cases show as returns made around the same time; these may be consolidated into one case in practice, but show as two on the system.
- The earliest application on any case involving more than one application was used to determine the type of application and the duration between cases.
- Cases show all applications dated 2016-17 received, regardless of whether Cafcass went on to complete work within the case, or whether the case was later withdrawn.
- The duration measure is limited to recording the date of the first application and the date that the previous case closed to Cafcass; this date is not necessarily the date that the case closed in court, as proceedings may continue with the local authority completing further work or without social work involvement, or there may have been an administrative delay in entering case closure dates.

2. The circumstances behind returns to court

A random sample of 600 private law cases received in April 2017⁴ was used to obtain cases for qualitative case file reviews. They were manually reviewed to identify whether any of the subject children had been involved in previous cases with Cafcass. This method mitigated some limitations detailed in the large-scale reporting method above, where the administrative linking of person records may have been missed, and where returns only reflected whether the eldest child had been involved in a previous case. 204 cases were identified as returns (34%), of which a sample of 100⁵ was selected randomly after separation by number of previous cases so that the sample reflected proportions identified in the larger population: 65% first returns, 24% second returns, 11% third returns or higher.

Table 1: The number of cases in the sample by the number of previous cases

Number of previous cases	1	2	3	4	5	6	Total
Number of cases in sample	64	24	6	3	2	1	100

Case file reviews examined issues behind the returns according to the following questions, using a Framework tool to organise data and allow case-and-theme-based analysis.⁶

- What was the context in which the previous order was made?
- How sustainable or enforceable had previous legal outcomes proved?
- What was the length of time between proceedings?
- What are the reasons for the new application as stated by the applicant, and the trigger for the return to court including the respondent's view?

⁴ 3,149 new private law cases were received in April 2017; monthly figures are set out on the [Cafcass website](#).

⁵ Ten cases originally chosen for the sample were later excluded and replaced, where Cafcass did not complete any work so case information was not available. These cases included enforcement applications and special guardianship applications.

⁶ Framework analysis was developed in the 1980s by researchers at the National Centre for Social Research: Ritchie, J. and Spencer, L. (1994) 'Qualitative data analysis for applied policy research', in A. Bryman and R.G. Burgess (eds) *Analysing Qualitative Data*, London: Routledge.

- What are the case issues and do they appear new or a repeat of those from the previous proceedings?
- Is there any new safeguarding or welfare risk?
- What is the child’s view (as reported by the parties in the safeguarding letter, or the Cafcass Family Court Adviser (FCA) in the section 7 report)?⁷

Cases were also coded to include a quantitative aspect to the analysis:

- A ‘type’* signifying why the case returned to court, and whether this is a new or repeated issue (this was agreed between two coders to improve inter-coder reliability)
- The application type, broken down further than the legal title
- Whether the applicant in each return was the same
- The duration between the last two cases (according to Cafcass involvement)
- The stage at which social work involvement ended in the most recent case

*The types are set out below (Table 2).⁸ There were few single-issue cases and selection is therefore based on best fit and what we took to be the *primary* driver of the return to court, and does not necessarily mean that other concerns were absent from the case.

Table 2: Reason for return to court types

Type	Description
Conflicted adults	High levels of mistrust between adults, and difficulties working together and communicating. Some are able to put aside enduring problems in the children’s interests for extended periods of time, but the issues may flare up following incidents or proposed changes in child arrangements.
Safeguarding concerns	One or both adults raised issues about safeguarding and promoting the welfare of children. This includes allegations of maltreatment, as well as other issues that may compromise a safe and beneficial relationship or the child’s welfare or development (such as a further incident of harassment to a parent, or a parent having an acute mental illness).
Change in life circumstances	An actual or proposed change that has/would alter previously agreed child arrangements, such as: moving house; changed child routine or parent’s job; positive parental lifestyle change; the death of the adult the child lived with.
Child’s wishes and feelings	A decision by the child to change arrangements or stop spending time with a parent.

⁷ Direct wishes and feelings of children involved are not recorded on every case in the sample, as just under half involved Cafcass completing work after first hearing where the FCA may meet with the child, and in some cases the children were too young to have ascertainable wishes and feelings (ages ranged from 1 to 15).

⁸ Case types were adapted from those within Liz Trinder’s work on private law enforcement cases: *Trinder et al. (2013) ‘Enforcing contact orders: problem-solving or punishment?’*, *Family Law*, 43(9). The category of ‘unreasonable withholding’ of contact was removed as it requires a subjective assessment outside the scope of this study; and a new category of ‘change in life circumstances’ was added which is relevant to our analysis which looks at a wider range of applications than enforcement cases.

Findings: Scale and patterns of cases returning to court

Number of return private law cases

In 2016-17, Cafcass worked on 40,599 private law cases. Of these cases, 12,376 (30%) were returns to court, meaning the eldest child had previously been subject in at least one case (either private or public). For the majority, this was the first return (that is, the second case).

Table 3: the number of previous cases linked to each private law case received in 2016-17

	Number of previous cases	#	%
First case	0	28,223	70%
Return case	1	8,409	21%
	2	2,658	7%
	3	842	2%
	4	302	1%
	5	119	0%
	6	29	0%
	7	14	0%
	8	2	0%
	9	0	0%
	10	1	0%
		12,376	30%
Total number of cases		40,599	

Children involved in return cases

18,540 children (of 59,091 child subjects in 2016-17 applications) were involved in return cases; this represents 31% of children subject to proceedings. Table 4 shows the ages of the eldest child in all cases received in 2016-17.⁹ The average age of the eldest child involved in return cases was 7 years old. Return cases had a higher proportion of older children.

Table 4: the age and number of eldest children involved in cases received in 2016-17

	All cases		First case	Return case
Age of the eldest child	#	%	%	%
Under 1	2,345	6%	8%	1%
1 to under 5	11,815	29%	33%	22%
5 to under 10	15,146	38%	35%	43%
10 to under 16	10,173	25%	22%	32%
16 and over	672	2%	2%	2%
Total number of eldest children	40,151		27,097	13,054

⁹ This number is lower than the total number of cases received in the year, as some children returned on multiple cases within the same year.

Type of return application

The majority of return applications were for child arrangements orders (38% spend time with, 25% live with) which may include new arrangements or changes to existing arrangements. Cases returning to court specifically for enforcement represented 24% of returning cases.

Table 5: the application type of 'return' cases received in 2016-17

Application type	#	%
Child arrangements order - spend time with	4,662	38%
Child arrangements order - live with	3,035	25%
Enforcement order	2,999	24%
Specific issue (s8)	782	6%
Prohibited steps (s8)	480	4%
Special guardianship (s14A)	176	1%
Other	242	2%
Total	12,376	

Duration between proceedings

Over half of returning cases (63%) involved an application made within two years after the previous case closed to Cafcass (some applications were made while the previous case was ongoing, suggesting that the applications may have been concurrent and the cases may have later been consolidated within the same set of proceedings). Almost a quarter of cases (23%) did not return until after at least three years. Cases that had returned to court more times were more likely to return within two years.

Table 6: the duration between the last two cases (case received in 2016-17 and the previous case) based on Cafcass involvement

Duration	#	%
Previous case ongoing/concurrent	621	5%
6 months or less	2,195	18%
Between 6 months and 1 year	2,293	19%
Between 1 and 2 years	2,729	22%
Between 2 and 3 years	1,644	13%
Between 3 and 4 years	1,079	9%
Between 4 and 5 years	665	5%
Between 5 and 10 years	1,097	9%
Over 10 years	53	0%
Total	12,376	

Table 7: the duration between the last two cases split by the number of returns

Number of previous cases	1	2	3	4	5+	All returns
Returned within 2 years	61%	66%	69%	78%	82%	63%
Returned after 2 years	39%	34%	31%	22%	18%	37%

Findings: Circumstances behind returns to court

We completed case file reviews of a sample of 100 private law return cases received in April 2017. Below we describe the cases included in the sample, and set out analysis of what lies behind the returns to court. Examples are used to illustrate themes identified, but are redacted to protect confidentiality.

These cases are nuanced and are rarely about one single issue. For example, cases that we coded as conflicted adults commonly featured allegations and counter-allegations of the child being harmed and/or competing accounts as to the child's wishes. While categorising cases into broad types is helpful for analysis, it must be noted that such distinctions do not capture the complexities of each case. The inclusion of a safeguarding category should not be taken to imply that there were no safeguarding concerns in other categories, but rather that these did not drive the application (for example in conflicted adult cases there was commonly a risk, or even evidence, of emotional harm derived from chronic conflict).

Return to court type: Table 8 shows the type of case (full definitions are set out in the methodology section, Table 2) and whether the issues were new or repeated (based on whether the issues did or did not feature prominently in the previous case).

Conflicted adults was the primary driver for returning cases (39%), followed by safeguarding concerns (36%). When looking at cases featuring new or repeated issues, conflicted adults accounted for the majority of repeated issue cases (60%), and safeguarding concerns the majority of new issue cases (40%), followed by a change in life circumstances (31%).

Table 8: reason for return to court type, by issue type (April 2017 sample)

	New issue	Repeated issue	Total
Conflicted adults ('conflict'): high levels of mistrust between adults and difficulties working together and communicating, meaning issues flare up following trigger incidents.	6	33	39
Safeguarding concerns ('safeguarding'): one or both adults raised issues about child protection or compromised child welfare.	18	18	36
Change in life circumstances ('life'): an actual or proposed change that has/would alter previously agreed child arrangements.	14	2	16
Child's wishes and feelings ('child'): a decision by the child to change arrangements or stop spending time with a parent.	7	2	9
Total	45	55	100

Duration between last two cases (based on Cafcass involvement only): we found that cases which returned quickly were more likely to be driven by conflicted adults, accounting for 49% of returns within two years, compared with 24% of returns after two years. Of those that returned within two years, 76% involved repeated issues; of those that returned after two years, 76% involved new issues.

Table 9: the duration between the last two cases (case received in April 2017 and the previous case) based on Cafcass involvement, by reason for return to court type

Duration	Total	Conflict	Safeguarding	Life	Child
6 months or less	11	5	4	1	1
Between 6 months and 1 year	25	12	10	2	1
Between 1 and 2 years	23	12	8	2	1
Between 2 and 3 years	10	4	4	2	0
Between 3 and 4 years	8	2	2	2	2
Between 4 and 5 years	6	2	2	2	0
Between 5 and 10 years	16	2	6	4	4
Over 10 years	1	0	0	1	0

Table 10: the duration between the last two cases (case received in April 2017 and the previous case), by reason for return to court type (April 2017 sample)

	Total	Conflict	Safeguarding	Life	Child
Cases returned within 2 years	59	29	22	5	3
Cases returned after 2 years	41	10	14	6	11

Table 11: the duration between the last two cases (case received in April 2017 and the previous case), by issue type (April 2017 sample)

	Total	New	Repeated
Cases returned within 2 years	59	14	45
Cases returned after 2 years	41	31	10

Type of application: the majority of return applications were enforcement cases or applications to change 'live with' arrangements, which may indicate a breakdown in arrangements. Others involved applications to establish or vary 'spend time with' arrangements and specific issue applications, which were more likely about clarifying or adjusting arrangements.

Table 12: the application type of the return case received in April 2017, by reason for return to court type (April 2017 sample)

	Total	Conflict	Safeguarding	Life	Child
Enforce 'spend time with' arrangements	27	16	5	2	4
Change 'live with' arrangements	24	4	15	4	1
Vary (progress or increase) 'spend time with' arrangements	14	5	4	4	1
Establish 'spend time with' arrangements	11	3	6	2	0
Vary (decrease or stop) 'spend time with' arrangements	8	4	1	0	3

Specific issue	5	3	0	2	0
Establish 'live with' arrangements	4	1	2	1	0
Return child to resident parent's care	4	2	2	0	0
Other	3	1	1	1	0

Applicant: there was no clear distinction between types of cases where the same or a different applicant made each application, although cases featuring new issues were more often brought by different applicants (62%).

Table 13: whether the applicant was the same across cases, by reason for return to court type (April 2017 sample)

	Total	Conflict	Safeguarding	Life	Child
At least one case has a different applicant	54	21	18	9	6
Each case has the same applicant	46	18	18	7	3

Table 14: whether the applicant was the same across cases, by issue type (April 2017 sample)

	Total	New	Repeated
At least one case has a different applicant	54	28	26
Each case has the same applicant	46	17	29

Stage at which social work involvement ended in most recent case (received April 2017): further work by Cafcass or another safeguarding organisation was ordered in the majority of the latest returns (59%). A higher proportion of conflict cases (54%) ended at the first hearing compared to other types (36% safeguarding, 22% child's wishes, 31% change in life circumstances). Furthermore, a higher proportion of cases featuring new issues continued after the first hearing (67%) compared to those with repeated issues (53%).

Table 15: stage at which social work involvement ended in the return case received in April 2017, by return to court type (April 2017 sample)

	Total	Conflict	Safeguarding	Life	Child
At first hearing	41	21	13	5	2
After first hearing – completed by Cafcass	45	16	16	7	6
After first hearing – completed by the local authority	12	1	7	3	1
After first hearing – completed by another organisation	2	1	0	1	0

Table 16: stage at which social work involvement ended in the return case received in April 2017, by issue type (April 2017 sample)

	Total	New	Repeated
At first hearing	41	15	26
After first hearing	59	30	29

Conflicted adults

The majority of returns were due to conflict between adults. Many involved the same concerns that had been raised in previous proceedings. A key theme was the inability of adult parties to communicate about issues, together with chronic mistrust and antipathy, leading to use of the court to resolve disputes. Cases that featured chronic conflict gave rise to professional concerns about the risks of emotional harm to the children.

Numbers	39 cases were coded as being driven by conflict, 85% of which are coded as involving repeated issues, meaning the same concerns driving the conflict were present in previous cases.
Types	<p>The majority of applications were to enforce 'spend time with' arrangements (16). Others included applications to vary 'spend time with' arrangements (5 to progress or increase, 4 to decrease or stop) and change 'live with' arrangements (4).</p> <p>Over half (54%) completed at first hearing, which is a higher proportion than other types (36% safeguarding concerns, 22% child's wishes, 31% life circumstances).</p>
Timescales	<p>74% of conflict cases returned within two years (comprising 13% within 6 months, 31% 6-12 months, 31% 1-2 years).</p> <p>This is a larger proportion of cases returning within two years than found under other types (63% of safeguarding concerns, 31% of life circumstances, 33% of child's wishes).</p>
Triggers	<p>Concerns raised across cases include:</p> <ul style="list-style-type: none"> • Disputes over extra contact (mid-week; overnight; special occasions) • Disputes over passports and holidays abroad, involving concerns about abduction (particularly where one parent was born abroad) • Disputes about decisions regarding schooling and health • Travel practicalities for contact: time, distance and cost • Handover practicalities: timings, place, hostile incidents • Malicious behaviour towards the other parent • Retaining the child outside of ordered arrangements • Concern over commitment to contact, unreliability or inconsistency • New partners • Parental separation after reconciliation • Allegations of welfare concerns

Behavioural rather than attitudinal change

We have set out above the finding that conflict cases tend to return to court sooner than other types of cases. Notwithstanding this, we were surprised that some conflict cases did not return sooner given the degree of reciprocal animosity and, in many such cases, previous allegations of domestic abuse. In some such cases the court had set out very specific arrangements to be followed, to the point that it was effectively micromanaging elements of family life. Parties

were often able to stick to such precise orders for a significant period of time. However, it appears that while parties changed their behaviours to comply with the court-ordered arrangements, their attitudes towards the other party did not change; mistrust and hostility continued behind arrangements, making them fragile.

What appear to be small disputes then triggered a breakdown of arrangements or reopening of hostility, revealing the underlying ongoing concerns. These included concerns that the other party spoke negatively about them to the child, behaved maliciously at points of contact (such as handovers, communications about arrangements, or within handover books), or created conflict through their actions around arrangements (being unreliable or appearing controlling). A number included serious allegations of previous domestic abuse within the adult relationships, which, while considered in previous proceedings, continued to influence parties' attitudes and behaviours.

A mother made a second application to court for a specific issue after the father refused to sign a consent form for the child's school. Animosity and mistrust evidently remained, despite the maintained 'spend time with' arrangements made two years previously. The same allegations and counter-allegations of domestic abuse, emotional abuse of the children, mental health issues, and unreasonable blocking of contact were raised within proceedings, together with other disputes over the child's appearance.

Communication difficulties

There also remained an inability to communicate or negotiate effectively. This meant that issues around more flexible parts of court orders, or new practical issues, caused difficulties resulting in a return to court to resolve them. Such issues might relate to the 'mechanics' of child arrangements – the logistics or specific timings – rather than opposition to it taking place in principle. In such cases parties were not able to negotiate and sustain changes, and relied on the court to resolve practical co-parenting issues.

Examples found in our sample triggering a breakdown in arrangements or a return to court on a specific issue included:

- whether holidays could be abroad;
- if two individual weeks of holiday time could be used consecutively;
- if arrangements needed to change after the child started school;
- if a change of arrangements could be made following a parent's new shift patterns;
- suitability of new accommodation;
- where a parent could take the children during their time with them; and
- which third parties could be present during contact.

Third parties

Extended families and parents' partners affected arrangements in both positive and negative ways. Some extended families provided neutral spaces for contact or helped with handovers, and some partners helped travel arrangements to promote contact (with the end of the relationship contributing to a breakdown in the arrangements). However, others maintained or

increased conflict. They appeared to fight proxy wars, with allegations of harassing or malicious communication and hostile interactions at handovers.

The use of court orders

Court orders were seen as an important way of formalising agreements and providing a structure to hold the other adult to account. Courts, rather than agreements reached in mediation, seemed to be trusted to hold more weight for parties who had little trust in each other to consistently stick to agreements.

The case returned to court for a second time after a breakdown in arrangements agreed at mediation. The resident parent was concerned that the other parent did not stick to things consistently, and felt that they needed 'something legally binding'.

Parties agreed arrangements at the first hearing in their third set of proceedings, but wanted to secure this with a court order. The FCA recorded: '[The non-resident parent] wants everything in writing so [the resident parent] cannot say it wasn't agreed.'

However, some cases returned over technicalities in the court orders. Arrangements could fall apart over small unspecified details due to the dynamics within the adult relationship, requiring the court to specify arrangements in minute detail.

An order allowed 'further contact as agreed by parties', but no such further contact was agreed and the case returned to court on the issue of a holiday.

An order specified required payments for travel arrangements to bring the children to contact, but did not account for increased costs in line with the gradual increased contact it required. The case returned to court as one party refused to make extra payments and the other party refused to travel without this.

Stuck in conflict

It is helpful to distinguish between types of parental conflict, and the role of social workers and the court in addressing them. In so doing we made use of the Cantwell model¹⁰ as it has stood the test of time and influenced the development of the Cafcass High Conflict Practice Pathway (2017). There is more recent international literature on conflicted parents, for example by Smyth and Moloney (2017) who propose a two-part typology consisting of reactive hatred (where the strength of negative feeling is related to the separation) and entrenched hatred (where it is derived principally from embedded dysfunctional dynamics or personality structures).

Making use of Cantwell we found five cases could be described as 'temporarily dysfunctional', which may imply that such relationships are more likely to be resolved in one set of proceedings or out of court. There were 16 'significantly conflicted' cases and 18 'stuck conflict'

¹⁰ Cantwell, B. (2007) 'Battling parents: are they getting the right treatment', *Family Law*, 37(8): (a) 'temporarily dysfunctional' – a history of collaboration and some awareness of the impact of conflict on children; (b) 'significantly conflicted' – a volatile relationship, history of poor communication, a wish for a resolution but a need for clear written agreements; (c) 'stuck conflict' – an (often unconscious) interest in maintaining conflict, great difficulty putting children's needs first, requiring firm court/social work control.

cases. It was notable that, in some stuck cases, one party appeared to be open to resolution, whereas the other did not; indeed, it was apparent that he or she was behaving unreasonably. The point we take from this is self-evident but worthy of repetition: resolution requires the co-operation of both parties, whereas cases can become chronically stuck if just one party will not or cannot move on. In other stuck cases, as one might expect, both parties seemed to have an interest (perhaps unconscious) in maintaining the conflict.

A mother made three applications for the children to live with her. After the second application, the court made a section 91(14) barring order, preventing further applications for three years. The most recent application was made shortly after this period had expired. Each application involved allegations and counter-allegations of neglect and substance abuse. The FCA described the parents as using the court as a 'third parent' and noted the negative impact on the children from the chronic parental conflict.

Three sets of proceedings each took place six months after the previous one ended, as each parent believed that the child would rather live with them. Concerns about the high conflict, described by the FCA as an 'ongoing bitter dispute', were so significant that Cafcass made a section 47 referral to the local authority and the child was placed on a child protection plan under emotional harm caused by parental dispute.

Safeguarding concerns

Over a third of returning cases were driven by parties raising child protection concerns or broader welfare concerns – such as a parent with mental illness – where the child's development and own mental wellbeing might be compromised without court input. Other categories may have featured safeguarding concerns, but were not judged to have driven the application (for example in conflicted adult cases there was commonly a risk, or even evidence, of emotional harm derived from chronic conflict).

Numbers	36 cases were coded as driven by safeguarding concerns. Half involved new concerns, and half concerns raised within previous proceedings.
Types	<p>In some cases a party's concerns led them to make an application to vary the child arrangements order, but in others it led to suspension of contact, followed by the other party making an application.</p> <p>The majority (15) were applications to change 'live with' arrangements. Others included applications to establish (6), enforce (5), or progress (4) 'spend time with' arrangements.</p> <p>Most of these most recent cases (64%) involved work after first hearing, either by Cafcass (44%) or by the local authority (20%).</p>
Timescales	<p>For repeated issues, the majority (83%) returned within two years (17% within 6 months, 39% within 6-12 months, 28% within 1-2 years).</p> <p>For new issues, 39% returned within two years; 28% between two and five years; and 33% over five years later.</p>

Triggers	Triggers included: <ul style="list-style-type: none"> • escalating aggression at handovers (some with a history of domestic abuse); • concerns about new, continued or relapsed issues of neglect, mental health issues, alcohol or substance abuse, involvement in abusive relationships, criminal activity; • local authority involvement and/or support of change following child protection or welfare concerns; • claimed positive adult lifestyle change; and • parental separation after reconciliation.
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Local authority involvement

Local authority involvement in such cases was notable. In 17 cases the application or changed arrangements were supported by the local authority, or prompted by their involvement with the family, either at a child in need or child protection plan level. This accounted for 14 of the 17 applications to change or establish 'live with' arrangements.

New concerns

Cases that are coded as involving new concerns had been to court previously due to disputes between the parents or other family members about child arrangements, or may have involved a professional concern about the other party. These tended to involve a party either suspending contact arrangements or retaining the child following the child's reported disclosure of abuse to them perpetrated by the other party or their partner. The most frequent type of abuse alleged was physical, with one concern about sexual abuse and another about the parent involving the children in their drug misuse. Some applications followed local authority advice, child protection plans, or section 47 enquiries¹¹ relating to domestic abuse incidents, serious drug use, physical abuse incidents, alcohol misuse, and neglect.

Repeated concerns

Challenges remain over how a child can spend time with a parent in ways that are safe and beneficial where there are histories of risks derived from mental health issues, substance abuse, and domestic abuse. Returns may be prompted by a party's desire to progress contact, but the other party shows caution given previous experience of instability.

In such fragile and complex situations, it may be unrealistic to expect that a court will find a long-term solution and the case is likely to return to court unless one party 'gives up'. In some we can see that arrangements can hold for a period of time with constant support from the local authority, but they return to court when this input ends, revealing the fragility of arrangements. Examples are set out below.

Parental mental health

Some cases involved parental mental health issues which were found to compromise the parent's ability to build or sustain a beneficial relationship with the children. The severity of the

¹¹ A section 47 enquiry is carried out by the local authority if it has reasonable cause to suspect that a child is suffering or is at risk of suffering significant harm and assesses whether further action is required.

illness could mean that the party was unresponsive to the needs of the children, and failed to grasp how the illness impacted their parenting ability and the children. Applications could be prompted by a deterioration in health which had been addressed and mitigated in previous proceedings. Others were applications made by a party with mental health issues who claimed that the problems had abated, but serious professional concerns remained.

A father made a 'live with' application after the local authority placed the children, who lived with their mother, on a child protection plan under neglect. The mother was subsequently detained under the Mental Health Act. This was almost an exact repeat of circumstances which led to his application over three years previously, where lengthy proceedings ended with the children living with their mother and spending time with him.

A father made an enforcement application to spend time with the children. However, the judge acknowledged as legitimate the mother's concerns that the father at this point, given his mental health, was unable to demonstrate he would sustain a relationship with the children if he was let back into their lives, and that this would not benefit them.

Physical violence and domestic abuse

Many repeated-issue cases involved risk of harm derived from histories of physical violence and domestic abuse by fathers. Returning cases included second attempts to establish arrangements, or followed breakdowns in arrangements after a new incident, such as threatening behaviour or escalating verbal abuse at a handover. Others featured the risk related to the mother's repeated involvement in abusive relationships which endangered the children's safety.

Difficulties in progressing supported contact were evident in our sample. Some involved reluctance from the children after witnessing new aggression towards their mother, or due to memories of witnessing abuse or picking up anxieties from a parent or an older sibling. Ongoing supportive work in such cases would be required for both perpetrator and victim(s), but this was not always taken up. In some cases where the perpetrator had completed sessions or a programme to address abusive behaviour, it was evident that either there remained a lack of insight into the impact of their aggression towards the mother and children, or there had not been sufficient recovery time for the victims.

A father's application to progress from indirect contact followed his completion of a domestic abuse programme. However, the FCA considered that given the direct memories of very serious abuse there was no realistic prospect of a beneficial relationship, as it would instead likely risk further emotional harm.

A mother made an enforcement application, which began the fifth set of proceedings within four years. The father had ended contact following a local authority section 47 investigation into harm caused by mother's partner. The mother showed significant vulnerabilities including mental health issues, and the underlying context within each case was her forming relationships with unsuitable and, in some cases, violent men. The challenge was posed again as to how the child, now only four years old, was to spend time with her mother in ways that were safe and beneficial.

Substance abuse

In some cases, family networks had been used to support mothers at the end of previous proceedings; following the problems reoccurring, the local authority was supporting the extended families to make 'live with' applications to remove the child from the mother's care.

Other cases were driven by a party claiming positive lifestyle changes, but professional concerns remained. In such cases it is likely that further applications will be made, as the non-resident party seeks to persuade the court that he or she has made sufficient progress to warrant direct contact to be safe and beneficial. This may follow successful completion of a relevant detox programme where the party can demonstrate sustained change, examples of which are included in the change in life circumstances section below.

An enforcement application by a mother was the third set of proceedings, in which she claimed to have addressed her alcoholism. This issue had been central to previous applications (the father's 'live with' application, followed by the mother's 'spend time with' application). Contact arrangements had ended after the mother failed to be sober during contact, and the local authority reported that the children were more settled without contact. The court remained concerned about risks of direct contact before the mother could demonstrate substantial change.

Change in life circumstances

These applications were driven by a change in life circumstances, which seemed unlikely to have returned to court without the life change.

Numbers	16 cases were coded as driven by a 'change in life circumstances'. These issues tended to be new; two involved repeated issues where the full effects of the life change were not arranged or established in the first case.
Types	Key applications were to change who the child lived with (4), and to progress or increase 'spend time with' arrangements (4). Two of the five 'specific issue' cases also featured in this category.
Timescales	There was a spread of timescales for returning to court for these issues. Most returned over five years after the preceding case (5 cases).
Triggers	Trigger issues behind the applications included: <ul style="list-style-type: none">• a move by one party (7);• the death of the adult the child lived with (3);• a claimed positive adult lifestyle change (3);• a change in the child's stage/development (2); and• parents jointly agreeing to remove prohibited steps order to allow their child to travel abroad with each parent (1).

Geographical barriers to contact

A number of cases were brought to court regarding a proposed, or completed, relocation of the child and resident party. In several of these cases, the move followed soon after parental separation, as the resident parent moved to be close to their family. Other relocations included moving abroad to be with a new partner or take up a new job.

Concerns raised by parties opposing the relocations included difficulties in practical arrangements for spending time together, as well as feeling excluded or marginalised from day-to-day decisions about the child. We found examples of cases where the court allowed the move and set out new arrangements across the long distance, and also where the court decided the child should not move, given the value of continuity and stability of school and friends, together with the safe parenting offered by the other party.

Work in these cases included proposals for how arrangements could be managed to prevent the non-resident party from feeling, or being, marginalised. However, some cases categorised under conflict had involved previous relocations, showing difficulties in practical implementation of court-ordered arrangements after the move.

A mother moved abroad to live with her new partner and subsequently made an application for the child to move to live with her. The FCA noted that she showed little insight into how she would meet the child's needs in the new country; specifically how she would help the child to deal with the loss of the father with whom he currently lived, due to her hostility toward him.

One case returned to court as the previous agreement no longer reflected practicalities of the changed distance between each parent's home. Both parents felt that the other parent used the child arrangements to try to control them, and the 'left behind' parent felt the move was intended to exclude them from bringing up the child.

Deaths of adult carers

A small number of cases came to court to secure arrangements for the child after the death of their carer. In one case this was coded as a repeated issue, as it drove two applications.

Both the father and a maternal relative applied for the child to live with them after the mother died. As the child had had no contact with the father since he was a baby, the court recommended mediation while the child lived with the maternal relative. The father made the second application seven months later, as mediation had not been attempted and arrangements had not been established. The issues underlying the maternal relative's reluctance to progress contact had not been fully explored within the first case.

Claimed lifestyle changes

Some applications were made as parties had addressed the issues which had previously meant that they were unable to unsupervised spend time with their child, through successful attendance at recovery groups and programmes. These cases had elements of safeguarding concerns, but are coded here given the recognised changes made to address the safeguarding concerns which had been central to the previous proceedings.

A father successfully completed a domestic abuse programme, and the mother was positive about the child developing a safe relationship with him. However, she was concerned about progression from supported contact sessions given the requirement to communicate directly with the father. In this case 'shuttle' mediation was recommended which can promote joint decision-making about the children without meeting face-to-face.

A mother made an application for the children to live with her; they had moved to live with their maternal grandparents four years previously following local authority concerns about her ability to safely care for the children. She demonstrated positive behavioural changes after significant involvement in relevant programmes. The older children were keen to return to live with her, but the grandparents opposed the move. The FCA recommended a staged return over a year with a family assistance order to help the transition, to help ensure the security of a continuing relationship with the grandparents who had provided years of stability, and support for the mother while adjusting to caring for the children.

Changes to child development

These cases involved a mix of life changes and adult conflict, where parties were unable to agree on changes as the child grew up. In one, parties had sustained arrangements well for over five years, but could not agree on extending holidays and weekend hours, which the non-resident party suggested would be appropriate as the child was much older and therefore more able to spend time away from his resident parent. In another, the family returned just over 18 months after the previous case following a dispute about how arrangements should change after the child started school and was therefore less available during the week.

Child's wishes and feelings

The child's direct or reported wishes and feelings are relevant to other case types too, and within the discussion below we will draw on aspects from those cases. However, these coded cases had the child's wishes and feelings as the key driver of the return to court, following their reported refusal to attend contact. They involved ten children, aged between 7 and 15.

Numbers	Nine cases were coded as driven by the child's wishes and feelings. These tended to be new, although two are repeated: one where the child's wishes and feelings were reported by one parent in the first case but not explored as the case ended at first hearing; and one where the child was refusing to attend contact that she had told the court she didn't want to be forced to go to in the previous case.
Types	All except one involved 'spend time with' applications, including to enforce arrangements (4), decrease or stop arrangements (3), and progress or increase arrangements (1). The other was for a change in who the child lived with.
Timescales	Almost half (4) of the cases returned several years later (5-10 years), indicating the return to court may have related to the child getting older.

Triggers

In most cases there was not one single trigger issue; many of the resident parents reported the longstanding nature of the child's unease or unhappiness at contact, until eventually they decided they would no longer 'force' the child to attend.

Concerns raised across cases include:

- being unhappy with the home conditions (cold, hungry, bored, uncomfortable with sleeping arrangements);
- being shouted at;
- being frightened of a parent;
- feeling unable to share feelings or concerns with the parent; and
- being prevented from staying in touch with their other parent.

Divided loyalties

Some cases showed pressure put on the child as they got older to make their own choices about contact or where to live. Their views appeared significantly impacted by the ongoing conflict between parties. While a party may have encouraged contact, the child may pick up on their anxiety or antipathy towards the other party and display the same behaviours, resulting in feeling upset and anxious at the thought of contact. The work of an FCA with the child seems particularly important in such circumstances, in helping the court identify what the child's views are and the risks derived from decision-making being delegated to him or her.

A child, aged nine, said he did not want to spend time with his father. The FCA noted that he felt it was 'his' decision on whether to go to contact. The FCA found that he focused on negative aspects of his time with his father when talking to his mother, even though he could describe positive aspects to the FCA. She reported 'a strong sense that he feels he is letting his mother down and needs permission to see his father'.

A child, aged ten, who lived with her father, was told when she was eight years old she could choose where to live when she turned ten. The FCA noted the responsibility this placed on her, with the strain of feeling torn between parents – asking to live with her mother, but potentially idealising what this would be like in reality.

Within cases coded under conflict, divided loyalties were again notable, while not driving the case itself. In one case a child, aged eight, drew a picture of her in the middle of a rope being pulled two ways. In a proposed relocation case, the teenagers said they were 'on the fence' about where to live, not wanting to make either parent unhappy.

Insight into children's needs

Some cases appeared to be less about parental conflict and divided loyalties, but instead about parenting: the party's ability to have insight into changing needs of their child, or to be approachable and communicative about potential issues. Some related to changing needs as the child grew up, including relevant activities as well as basic care needs; others related to comfort, including food, temperature and sleeping arrangements.

Within these cases, and conflict cases, there were also insensitivities about the child missing the other party and sometimes siblings. Children reported that their mobile phones were

confiscated and contact prohibited while spending time with the other parent; in others they reported being unhappy that their parent said mean things about the other parent. This might coincide with the child feeling unable to mention this, for fear of causing an argument or upsetting their parent – described by one as ‘sulking’ if they didn’t want to stay the night. These issues fed into unhappiness about the arrangements, contributing to their breakdown or applications to vary them.

A mother stopped contact after the child was increasingly distressed by it. The boy, aged 13, reported his frustration that his father did not listen to him, saying ‘I can’t tell him about my feelings’. He said he was scared of his father and knew he would be angry with him for stopping seeing him. He wanted his father to listen to what he wanted to do, to clean the house, to let him keep his mobile phone on, and to stop making comments about his mother and her boyfriend. The FCA recommended relationship counselling for the child and father before resuming contact, given the significant breakdown in the relationship.

In one case the older daughter, aged 11, did not want to spend time with her father. She said that she had nothing in common with him, found it difficult to communicate with him, felt left out of his interactions with her brother, and did not like sleeping at his house. She wanted to choose when and if she saw her father. The FCA noted that it was difficult to determine the extent of parental impact on those views, but felt that they were strongly held and that forcing contact may be counterproductive. The case returned to court four months later as the father attempted to enforce the daughter attending contact.

Age of the child

Particular issues for younger children across all cases arose where there had been a long time without contact: disagreements between parties revolved around the right pace of change for a child, with the need to build up a relationship, sometimes essentially ‘from scratch’. Others involved parties reporting that the child was upset by missed arrangements, leading to their decision to stop contact unless it could be relied upon as consistent.

Cases also featured issues relating to children getting older and wanting to spend time doing different activities, or not spend a lot of time travelling for contact. There were also cases showing the limitations of court orders, both for parties to enforce arrangements when children reached a certain age, and also for older children who wanted more flexibility in arrangements, but which would require a level of cooperation between the parents that appeared unlikely.

A father applied to discharge the order which he saw as redundant. The children – aged 12 and 15 – no longer attended contact around the specific times set out. He acknowledged that, at their age, they could choose what the arrangements should be. This was the family’s fifth time in court; five years previously there had been four applications within two years, relating to contact and enforcement.

A 14-year-old child said she wanted to ‘be able to stay at Mum’s when I want’, but the FCA noted that the ongoing high conflict between the parents meant such an arrangement would be unrealistic.

Conclusion

This study aimed to contribute to the broader debate within Cafcass and the family justice sector to identify private law cases that may benefit from an innovative approach or from being safely resolved out of court.

It shows that returning cases accounted for 30% of private law cases in 2016-17, representing substantial use of court and Cafcass resources. It also shows that such cases are not homogenous. Many variables are at play including: types of cases (four using our categorisation of primary drivers); when cases return; how many times a case has returned previously; whether the applications are triggered by new concerns or are substantially a repeat of matters raised in the previous application; and who makes the application.

Other considerations, which were beyond the scope of this study, include the extent to which interventions such as the Separated Parents Information Programme (SPIP), mediation, and Cafcass dispute resolution work are helping to resolve disputes and therefore reduce further applications (though we did note, where this could be discerned, how rarely SPIPs or mediation had been attended by both parties in return cases).

Returns to court therefore present a complex problem for which there is unlikely to be a simple policy solution. But our analysis provides a number of tentative conclusions:

1. The type of return cases which might most beneficially be considered for alternative dispute resolution options are the conflicted adult cases. These are the most numerous, accounting for 39% of return cases. They return to court more swiftly than other types and often contain repeated issues. The impact on the child is influenced by a host of factors (for example the duration of the conflict, degree of animosity, the child's age and resilience) but there is a serious risk of emotional harm.
2. There is a strong argument that safeguarding concern cases should be before the court in order that welfare matters are addressed.
3. A complication – one of many – is that conflicted adult cases commonly include allegations and counter-allegations of harm to children. Often the work of the FCA reveals that these appear to have little substance and form a rehashing of previous concerns. However, out-of-court resolution would need to distinguish reliably between allegations that pose a risk to a child's safety and welfare and those that do not.
4. The following questions may be of assistance in considering whether and how conflict cases can be diverted from court:
 - Can the intervention address likely features of: a parental need for micromanagement of aspects of family life; a belief that the authority of the court is required to resolve the matter; a possibly unconscious investment in continuing the conflict; possible emotional harm to the child?
 - Should diversion be provided at the point a parent seeks to make the application or is it possible to pre-empt applications by providing assistance towards the conclusion of proceedings? This could address common trigger issues found in this study (such as implementation of new arrangements, holidays abroad, new partners, changing work patterns, and moving house).
5. Changes in life circumstances and children's wishes and feelings cases account for fewer cases but they might be beneficially diverted from court through alternative services which allow the child to express freely his or her wishes and feelings, such as child-inclusive mediation.