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F A M I L Y L A W

ARRANGEMENTS FOR THE CARE AND UPBRINGING OF CHILDREN (SECTION 33 OF THE MATRIMONIAL CAUSES ACT 1965)

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6th February 1968

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Arrangements for the Care and Upbringing of Children (Section 33 of the Matrimonial Causes Act 1965)

Item XIX in our Second Programme of Law Reform, replacing the more limited tasks imposed on us by our First Programme, requires us to undertake a comprehensive examination of family law with a view to its systematic reform and eventual codification. It is inevitable that the completion of this large project cannot be arrived at efficiently if the Law Commission, whose resources are relatively small, cannot make use of the skill and enthusiasm of outside bodies who are prepared to assist by carrying out research on particular topics.

2. In the summer of 1966 it was already plain that it would be advisable to undertake a detailed examination of the operation of section 33 of the Matrimonial Causes Act 1965 - the section which requires the divorce court to be satisfied regarding the proposed arrangements for the care and upbringing of the children before making a decree absolute. When, therefore, Mr. John Hall of St. John's College, Cambridge offered, on behalf of the Cambridge Law Faculty, to put in hand some research for the Law Commission, we gratefully accepted the offer and suggested this as a suitable subject. The President of the Probate, Divorce and Admiralty Division welcomed the undertaking and work started in the autumn of 1966. We should like to thank the President and the judges of his Division as well as all the registrars and other busy people mentioned in paragraph 5 of the report who have given time and effort to answering a long list of questions or have helped in other ways to make the production of the report possible. Especial gratitude is due to the Cambridge Law Faculty for making a grant to cover the expenses incurred and above all to Mr. Hall himself.

3. The resources available to the Cambridge Law Faculty were limited and the scale of the research that could be undertaken - especially in relation to continued compliance after decree absolute with the arrangements sanctioned by the court - has necessarily been modest. Nevertheless the report made by Mr. Hall to the Law Commission on the 17th January appears to us to be a most instructive and valuable document. In saying this we are not, of course, suggesting

that we have reached any firm conclusions about the proposals it contains; we have not attempted to do so at this stage.

4. In deciding to publish the report the Law Commission have been guided, not only by the inherent interest of the document, but also by our expectation that its findings would be helpful to all who exercise jurisdiction under section 33. Since the General Conclusions set out at the end of the report suggest a considerable number of improvements in the law and practice, we have thought it right to give the report wide currency in order to attract comments from all who are interested in the subject. Although comment on any part of the paper will be of value to us, there are three questions of major importance on which, in particular, we would like to learn the views of readers:-

(a) Is it right, as suggested in paragraph 7 of the General Conclusions, that uncontested custody proceedings should normally be presided over by the registrar who would then formulate recommendations for submission at the hearing or some other convenient time to the judge for his approval?

(b) It is generally agreed that those who try criminal cases are helped in the duty of sentencing offenders by being "fed back" information about the subsequent history. Would it be feasible, as suggested by a Divorce Court Welfare Officer (see suggestion (31) in appendix C), for there to be a feedback of the subsequent history of children, at any rate in some cases, to the judges and registrars who have had to consider the arrangements for their care and upbringing under section 33?

(c) To what extent and for how long should the courts continue to control arrangements for the children's upbringing after decree absolute? Would it give the State too paternalistic a function if it were to continue to intervene after decree absolute further than is required by the general law for the protection of all children? If so, are the courts the most appropriate instruments for this task?

6th February 1968

REPORT ON AN ENQUIRY INTO THE WORKING OF SECTION 33 OF THE MATRIMONIAL CAUSES ACT 1965

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REPORT ON AN ENQUIRY INTO THE WORKING OF SECTION 33 OF THE MATRIMONIAL CAUSES ACT 1965

I INTRODUCTION

1. The Royal Commission on Marriage & Divorce, 1951-55, drew attention to the fact that the law as it then stood failed to ensure that in every instance the most suitable arrangements were made for the future of the children when the marriage of their parents was dissolved by the court (Cmd. 9678 §§ 366-372). The Commission accordingly recommended that the law should be changed to provide that a decree nisi should not normally be made absolute unless the court were satisfied that the arrangements proposed for the care and upbringing of the children were the best which could be devised in the circumstances (§§ 373-407).

2. This recommendation was substantially implemented by the Matrimonial Proceedings (Children) Act 1958, s.2, and re-enacted by the Matrimonial Causes Act 1965, s.33. This section provides as follows:

> (1) Notwithstanding anything in Part I of this Act but subject to the following subsection, the court shall not make absolute a decree of divorce or nullity of marriage in any proceedings begun after 31st December 1958, or make a decree of judicial separation in any such proceedings, unless it is satisfied as respects every relevant child who is under sixteen that -
>
> (a) arrangements for his care and upbringing have been made and are satisfactory or are the best that can be devised in the circumstances; or
>
> (b) it is impracticable for the party or parties appearing before the court to make any such arrangements.
>
> (2) The court may if it thinks fit proceed without observing the requirements of the foregoing subsection if -
>
> (a) it appears that there are circumstances making it desirable that the decree should be made absolute or should be made, as the case may be, without delay; and
>
> (b) the court has obtained a satisfactory undertaking from either or both of the parties to bring the question of the arrangements for the children before the court within a specified time.

It was decided by Scarman J. in B. v. B. [1961] 1 W.L.R. 856 that if a decree nisi is inadvertently made absolute without the requirements of the section having been complied with, the decree absolute is void; and by Baker J. in Shelton v. Shelton (1965) 109 Sol. J. 393 that if a judge has expressed himself as satisfied regarding the arrangements, but it subsequently appears that he did not know the full facts, his expression of satisfaction is nullified.

3. By 1966 some doubts had arisen as to whether this rule was working satisfactorily and the Law Commission decided that the matter ought to be investigated. The Commission asked me to help them do so by making an enquiry into the functioning of the rule, and the Law Faculty of Cambridge University made a grant to cover the cost of the expenses incurred.

4. The method which was adopted consisted first in sending out a series of questionnaires. One was submitted to all judges exercising divorce jurisdiction; another to the Senior Registrar at the Principal Probate Registry and to District Registrars of the High Court; others were sent to the divorce court welfare officers and to the children's departments of certain local authorities. In addition a small-scale follow-up survey was conducted; steps were taken to ascertain how the corresponding rule is working in Scotland; practising solicitors were consulted; and members of the public were invited through the Press to state their views.

5. Naturally my thanks are due to a very large number of persons who have assisted in this task: in particular to all those who patiently answered questionnaires (despite imperfections in the drafting thereof); to Mr. Registrar Tyrer and Mr. Registrar Bedworth for facilitating the follow-up survey; to the John Hilton Bureau of The News of the World for publishing an article on the problem and allowing me to read the numerous letters written in response, and to the Daily Telegraph for also publishing an article; to the Home Office for their co-operation in ascertaining the opinions of welfare officers and of local authorities; to Mr.J.Tiley and others for their assistance with the follow-up survey; to the Holborn Law Society for their guidance on the practicality of various proposals; to the numerous members of each branch of the legal profession who have given advice; and last but not least to the members and staff of the Law Commission itself, without whose

encouragement and guidance I could never have undertaken what was for me a completely novel but fascinating task.

II THE REPLIES OF THE JUDGES TO QUESTIONS ON THE WORKING OF THE SECTION

A. Preliminary

1. A document containing twenty questions (a few of them sub-divided) was despatched by the Law Commission in December 1966 to the Judges of the Probate, Divorce and Admiralty Division of the High Court (with the exception of Scarman, J. the Law Commission's Chairman) and to the Special Commissioners for Divorce (most of whom, of course, are County Court Judges). The questionnaire was answered, nearly always in full, by 15 of the 16 High Court Judges, one having asked to be excused owing to his very recent appointment, and 82 of the 91 Special Commissioners. In addition one Special Commissioner, while declining to answer the questions, wrote a letter stating his views on the problem. Several other judges wrote letters adding further points to those which they had made in answer to the questions asked. The total response was therefore 98.

2. It should be borne in mind when considering the answers that the experience of High Court judges and of Special Commissioners is somewhat different, owing to the fact that the former are concerned mainly with defended and the latter mainly with undefended suits.

3. Although the questions had been drafted with care it is now apparent in the light of the replies that some were ambiguous. Moreover a few tended to overlap with others.

4. An attempt will be made to summarise the replies and then to draw some conclusions.

B. The questions and Answers

1. Is the information contained in the petition, if subsequently confirmed by the petitioner in evidence, usually sufficient by itself to enable you to decide whether the proposed arrangements for the children are satisfactory (or the best that can be devised in the circumstances)?

47 answered 'yes' to this question (10 of these answers being

qualified) and 41 answered 'no' (4 answers being qualified). In addition 9 gave various answers which could not properly be described as affirmative or negative.

Thus opinion here was fairly evenly divided, this being true both of High Court judges and Special Commissioners.

2. In roughly what proportion of cases does evidence given at the hearing add to the information given in the petition?

Answers ranged from as high as '100%' down to '5%', 'rarely', and 'none in undefended cases'. However it was clear that most judges generally do receive further information at the hearing. Thus 55 replied that they do so in virtually all or at least three-quarters of their cases; and another 22 said that they do so in the majority. Only 17 stated that they do so in less than half their cases.

3. Have you ever suspected that there may be another "child of the family"* in existence apart from those disclosed in the petition?

19 judges said 'yes', 6 of these qualifying their answers. In most cases the failure to disclose was due to the petitioner's not realising that the child was, technically, a 'child of the family', rather than to a wish to deceive the court.

78 said 'no', 3 qualifying their answers.

4. How often do you find it necessary to order that the children be separately represented and in what circumstances do you make such an order?

75 have never ordered separate representation of the children, and 22 have. The most frequent reasons which prompted the latter to do so were a paternity issue of uncertainty as to whether the child was a 'child of the family'. Other reasons mentioned were where the child was living with a mentally ill mother, and when there was a request to take the child abroad.

In this question (unlike most) there was a difference in the pattern of replies of High Court judges and of the others: 9 of the 15 High Court judges have ordered separate representation, whereas it seems that only 13 Special Commissioners have ever done so. But to some extent the difference may be due to the fact that the former, unlike the latter, are mainly concerned with contested cases.

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* A 'child of the family' includes a child of one party to the marriage who has been accepted as one of the family by the other party (see Matrimonial Causes Act 1965, s.46 (2)).

5. In your experience what indications most commonly lead you to suspect that you have not enough information about the proposed arrangements?

This question was not susceptible of a simple answer, and a large variety of indications were mentioned. The one which occurred most frequently was: when the child is not living with the petitioner and has not been seen by him (or her) for some time.

Other indications mentioned included: evasive, lying or light-hearted answers by the petitioner; petitioner anxious to remarry; one party in a position to bring pressure to bear on the other; child living with a father who has no visible female support; abnormalities in the physical or mental history of child (including conviction before a juvenile court); child in care; criminal record of parent; mental illness of parent; overcrowding in home; mother working full-time; a feckless parent in charge; absence of reasonable financial arrangements; lack of up-to-date information; lack of interest in the child; children are to be split; petitioner finds child a tie; temporary arrangement only; child is living with relatives; parents are very young; parent in charge is a caravan-dweller.

6. If on the hearing of the petition you ask for more information do you normally receive enough by the time that hearing is concluded to enable you to reach a decision without adjournment?

The replies to this question were very evenly divided: 46 said 'yes' (though 15 made some qualification) and 45 said 'no' (7 with a qualification). 5 replies could not be classified in this way.

Of the High Court judges twice as many answered 'yes' to this question as answered 'no', the reason probably being that in the course of a defended case there is much more opportunity for relevant information to be given in evidence than in the brief hearing of an undefended case.

Unfortunately the question was ambiguous in that it did not make it clear whether a decision not to certify that the arrangements were satisfactory until a welfare officer had made an enquiry, constituted an 'adjournment' or a refusal; and so it is difficult to draw conclusions from the replies.

7. When at the end of the hearing of the petition you find that you have not enough information what steps do you take to obtain more? In what circumstances do you refer a case to a welfare officer? What other independent sources of information, if any, do you use?

There was a considerable overlap between this question and

Question 5, above, as there is naturally a tendency to call for a welfare officer's report when there is insufficient information otherwise available. Thus answers here to some extent resembled those given to Q.5, but circumstances in which such a report is ordered also include the following: if either party asks for a report; if there is a serious dispute; when an independent view is desirable; if the child is in moral danger; if it seems possible that better arrangements could be devised; if the petitioner is of low I.Q.; if the parties are still living under the same roof and one is treating the other with cruelty; if the character or mode of life of the person with whom the child lives is suspect; if a young child is living alone with its father; if the petitioner is in real difficulty in obtaining information about the child's circumstances because of expense, hostility of the respondent, or absence abroad; where there is a serious housing difficulty, or the petitioning wife is living in a local authority house of which the tenancy is in the husband's name.

It appears that 20 Commissioners and 1 High Court judge do not use any other source of information. The others mentioned: doctors, priests, schoolmasters, relatives, neighbours, the police, the N.S.P.C.C., the person with whom the child is living, the Children's Officer, and enquiry agents called as witnesses by the parties. In fact enquiry agents appear to be the most popular, other than welfare officers, some 14 judges (all Commissioners) stating that they accept evidence from them.

Quite a number of Commissioners emphasised that it was the duty of the petitioner's solicitors to take whatever steps were needed to procure sufficient evidence to satisfy the court.

8(a) Roughly what proportion of cases do you refer to a welfare officer?

It was unfortunate that the question did not distinguish between those cases where there is a contest as to custody and those, the great majority, where there is none. About half the High Court judges made the distinction in their answers and those who did not do so expressly were probably confining themselves to cases where there was no contest as to custody. Hardly any of the Commissioners drew the distinction, but as they are probably concerned with fewer contested custody cases this may not have mattered as much.

Those answers which dealt with cases where custody is contested showed that frequent use is made of welfare officers' reports here. But there is quite a marked discrepancy: at least

one High Court judge refers all such cases to a welfare officer; another refers half; and one Commissioner refers 10%.

With regard to cases where there is no contest concerning custody (including here the answers which did not differentiate) it is clear that only a small propoertion are referred to welfare officers. 74 of these replies were in the form of percentages and the average of these was 5.8%, though the true figure is probably a little less as some replies were in the form of 'not more than-%.' It might be reasonable therefore to take 5% as the rough average, and certainly this particular figure was more frequently quoted than any other.* What was rather remarkable however was the range of disparity between judges: two have never referred a case for a welfare officer's report, one has referred only two cases in the course of ten years, and three (including one High Court judge) refer less than 1% of cases. On the other hand 18 refer 10% or more, and one of these (a Special Commissioner) refers as many as 30%. It is difficult to understand why practice should vary quite so much.

(b) Would you refer more, if welfare officers were not so scarce?

Rather surprisingly only 28 said that they would (6 with qualifications) and 64 said that they would not (1 with a qualification). Several of the latter group disputed the premise of this question and maintained that there is no scarcity, or no serious scarcity.

(c) Do their reports proivde useful assistance in reaching a decision?

94 judges answered 'yes' to this question and not a single judge said 'no'. Several used expressions such as 'absolutely invaluable'.

9. In what proportion of cases have you found that a welfare officer's report has confirmed that the proposed arrangements are the best?

It seems clear that in the great majority of cases where there is no dispute the report does confirm that the proposed arrangements are the best. 47 judges said that this is so in all or

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* The Report on the Work of the Probation and After-Care Department 1962-1965 (Cmnd. 3107) shows that a total of 2,463 enquiries were made by welfare officers in 1965; but this figure included enquiries ordered when custody was in dispute and when an application was made to vary an existing order.

nearly all cases, and 27 more said that it is so in the majority of cases. Only 3 denied that they tend to confirm the proposed arrangements, all of these qualifying their reply in some way. 13 gave an answer which could not be classified.

A number of those who said that the report nearly always confirms the proposed arrangements made it clear that nevertheless the making of the report serves a useful purpose: it often helps the child or the parents; and it may show a need for a supervision order.

10(a) In roughly what proportion of cases do you make a supervision order under section 37?*

In general judges make these orders very sparingly. 24 judges have never made a supervision order and a further 29 make such an order 'very rarely', 'very seldom' or in less than 1% of cases. At the other end of the scale 8 judges said they make supervision orders in 5% of cases (the highest percentage mentioned) and another that he makes them fairly frequently.

(b) Would you consider it an advantage if your power to do so were not confined by the section to "exceptional circumstances"?

Opinion was divided here. 33 judges thought it would be an advantage (6 with qualifications) but 54 did not (4 with qualifications). A few did not think it appropriate to express a view as they do not make such orders.

Some judges stated that they place a fairly broad interpretation on the expression 'exceptional circumstances'.

4 judges suggested that the section should be amended in order that a supervision order could be made although the child has not been 'committed to the custody of any person'. (on this point see post p.25).

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* Section 37 (1) provides 'Where the court has jurisdiction by virtue of this Part of this Act to make an order for the custody of a child and it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may, as respects any period during which the child is, in exercise of that jurisdiction, committed to the custody of any person, order that the child be under the supervision of an officer appointed under this section as a welfare officer or under the supervision of a local authority'.

11. If there is nothing to suggest that the parents disagree about the proposed arrangements for the children, in roughly what proportion of cases do you call for further evidence to show that they are satisfactory? In what circumstances would you do so?

This question overlapped with Questions 2, 5, 6 & 7. Moreover it was ambiguous, as the 'further evidence' could mean evidence elicited by further questions put to the petitioner, or evidence given by some other witness. Perhaps as a result of this the replies showed a marked variation.

At one end of the scale one judge replied 'in almost all cases' and, at the other end, 9 said in none. Of the 40 who hazarded a figure the average percentage was 9.5% but this cannot be regarded as a very meaningful figure.

There was a striking contrast in attitudes. Some judges obviously feel it is generally better to adopt the parents' own wishes; whereas others 'do not really think the agreement of the parents has much bearing on the matter', or 'it does not affect my mind'.

Answers to the second part of the question closely resembled answers to Question 5 and included: when the respondent has the children; insufficient information; father in possession of the child but with no female support; parents not interested in children or otherwise unsatisfactory; problem children; bad housing; unsatisfactory financial arrangements; unmarried household; petitioning parent has lost contact with the children; and petitioning parent known to judge as debtor or 'quarter sessions character'.

12. When a Custody Order is already in existence and it is proposed that the same arrangements should continue, do you normally accept these?

There were 83 affirmative answers here (15 with some qualification). 13 judges replied that they require the same evidence concerning the arrangements as in other cases.

It seems clear that, provided the order is of fairly recent origin, nearly all judges are satisfied for the purpose of section 33, though many still ask the petitioner a few questions.

13. Do you ever interview the children? If so, in what circumstances and, in particular, at what age?

It might have been preferable if the question had made it clear whether it was meant to include cases where there is a contest as to custody. As it was, 49 judges (including the great majority of the High Court judges) replied that they do interview children, though in the case of 21 only if there is a custody

dispute. 45 stated they do not interview children.

Among those judges who do interview children there was some difference of opinion concerning the minimum age at which this is appropriate. Two regarded thirteen as the minimum, but four were prepared to see children of six and upwards. The average minimum age specified by the 39 judges who dealt with this point was 9.9.

The High Court judges, but not many of the others, mentioned other circumstances which would influence them in deciding whether or not to interview. These included: where it is suggested the child should leave the country permanently; where there is a controversy regarding education; where the child is living with a mentally disturbed parent; where the child is unwilling to see a parent who has rights of access; where the child is alleged to have an invincible repugnance to one parent; where one parent alleges violence against the child by the other; where the welfare officer is puzzled; and where the judge feels he can help a child who is subject to the pull of conflicting loyalties.

Although half our divorce judges appear to take the view that nothing is to be gained by interviewing the children, some of the other half clearly find the practice helpful. Thus one judge observed that 'children, once at ease, are usually most illuminating'.

14. Have you ever ultimately refused to make a decree absolute because satisfactory arrangements were not proposed?

This question could have been more happily drafted, and a few judges answered simply that they do not themselves make decrees absolute! A further difficulty was that even if a judge refuses to certify that he is satisfied with the arrangements for the children, there is always the possibility that a fresh application may subsequently be made to another judge who will then do so.

However 8 judges answered this question in the affirmative - though one asked rhetorically 'What good did I achieve?' 83 answered negatively, but several pointed out that the delaying of the decree often has a very salutary effect.

15. How often do you find that it is "impracticable" for the parties to make arrangements which are "satisfactory or....the best that can be devised in the circumstances" (i.e. section 33 (1)(b) instead of (a))?

The predominant reaction here was 'very rarely', and 16

judges even said 'never'. On the other hand 6 judges stated that this was so in as many as 10% of cases.

It is apparent that section 33(1)(b) serves a useful purpose in situations where the child is overseas; and also, possibly, where a child of the parties has been adopted by a third person (though it was surely not the intention of Parliament that such a child should fall within the purview of section 33)*.

16. Have you ever had reason to think that arrangements sanctioned by you were not observed by the parties after decree absolute?

20 judges answered 'yes' (3 with a qualification). One county court judge knew of two such cases, both where it was intended that the children should be looked after by the husband's married sister.

65 judges said 'no', many saying that they simply had no idea. One added that 'a judge should never be an interfering busybody'.

17. Do you think that the Matrimonial Causes Rules should be amended to require the petitioner to give more details in the petition of (a) the present situation of the children and (b) the arrangements proposed (e.g. the accommodation where the children will live or the arrangements for access by the parent who does not have custody of them)?

28 judges thought this a good suggestion. The further details which it was considered would be helpful included: who is to look after the child while the parent in charge is at work; whether a maintenance order has been observed; the financial position of the household; particulars of the accommodation; and arrangements regarding access. Three judges thought that these details should not be contained in the petition but in a separate document. It was also suggested that the petitioner should be required to bring all information up to date just before the hearing.

67 judges opposed the suggestion; on the grounds, for example, that it is better for the judge to obtain the further evidence by questioning, that the petition is already long enough, that the proposed arrangements have often changed by the time of the hearing, and that it is sometimes difficult for the petitioner

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* It is understood that an amendment is likely to be made to the Matrimonial Causes Rules to deal with this point.

to obtain the information.

18. Should a respondent who does not enter an appearance be invited nevertheless to state in writing whether he considers the arrangements proposed for the children to be satisfactory?

Opinion here was fairly evenly divided, but a small majority thought that such an invitation should be made. Of the 53 judges who took this view, 3 stipulated that such a procedure should be confined to cases where the husband is petitioning (the views of a mother being especially important) and 7 added other reservations. It was suggested that the respondent should be told in the documents served on him that failure to reply might delay the decree. A few judges would like to be given power to require the respondent to attend.

43 judges opposed such a change. Several thought that it would create trouble; and some pointed out that the question is whether the court, not the respondent, thinks the arrangements satisfactory. Some of this group nevertheless thought that the court should be given power to compel both parents to attend.

19. Generally do you consider that the system is working satisfactorily?

80 judges, including all but one of the High Court judges, thought that it is, though 27 of these had certain reservations. 13 thought that it is not, 4 with reservations. 5 could not really be regarded as expressing a clear view either way.

20. On the basis that the number of welfare officers is unlikely to increase substantially in the next few years, what improvements in the system do you suggest?

A large number of suggestions and observations were made in answer to this question. These are set out in Appendix A.

C. Some General Conclusions from the Judges' Replies

1. It is clear that the great majority of judges believe that section 33 is serving a useful purpose and so it would clearly be a mistake to repeal the section and abandon the system altogether.

2. It has to be admitted that in the nature of things there are severe limits to what can be achieved by society for children whose parents have finally parted, whatever machinery is devised; but some modest improvement in the present system may well be possible, even within the current limits of our available resources.

3. The main shortcomings at present seem to be that:

(a) judges are hampered by insufficient time and facilities (and perhaps also by the fact that their experience before appointment was in quite different fields) to enable them at the hearing of the petition to conduct a wholly satisfactory enquiry into the arrangements which are proposed; and in consequence the consideration which they give to the arrangements may often appear to be, and sometimes may actually be, something of a formality;

(b) apart from the rather formidable sanction of a supervision order there is no machinery to safeguard the child against subsequent disadvantageous changes in the arrangements;

(c) there is considerable disparity between judges in the use which they make of their existing powers, both to order an enquiry by a welfare officer before approving the arrangements and to order supervision of the child afterwards.

4. It is significant that in the great majority of cases where an enquiry by a welfare officer is ordered, his report does in fact confirm that the arrangements are the best that can be devised; and as these are no doubt the cases where the proposed arrangements give rise to particular anxiety it seems fair to assume that in the overwhelming majority of other cases it would not be possible to make better arrangements than those which are proposed by the petitioner.

III THE REPLIES OF THE REGISTRARS TO QUESTIONS ON THE WORKING OF THE SECTION

A. Preliminary

1. The questionnaire, which consisted of 16 questions, most of them similar to those put to the judges, was sent to the Senior Registrar at the Principal Probate Registry and to 50 District Registrars in December, 1966. The former and 42 of the latter replied.

2. In analysing the answers, those of the Principal Probate

Registry have been dealt with separately in each case owing to the great disparity between the number of cases handled by that Registry and the District Registries.

B. The Questions and Answers

1. Approximately how many divorce cases are heard annually in your Divorce Town?

The figure for London is 13,000 a year (60% involving dependant children) whereas in the provinces the highest is Manchester, with 2,245 and the lowest Caernarvon, with only 90. The average for District Registries is 575.

2. In roughly what percentage of cases where there are children does the judge decide that he needs more information regarding the proposed arrangements for the children than that given in the petition and the evidence at the hearing?

London said 5%. The District Registrars ranged from as high as 20% down to as low as 0.5%, with an average figure of 6.7%.

3. How frequently, and in what circumstances, is an order made that the children be separately represented?

London said 'rarely, sometimes when paternity is in dispute, or where there is a bitter fight over custody.' The District Registrars either said 'Never' or 'Where there is a paternity dispute'.

4. Have you ever suspected that there may be another "child of the family"* in existence apart from those disclosed in the petition?

London registrars occasionally suspect this when dealing with questions of maintenance or access after decree. No more than 6 District Registrars have done so, and some of these only very rarely.

5. In roughly what proportion of cases where there are children is the adequacy of the arrangements for them referred to a welfare officer?

London said a little over 3%. The District Registrars ranged from as high as 20% to as low as 0%, the provincial average being approximately 6% (cf. the Report on the Judges' replies Q.8 (a), ante p 6 , where the figure was 5%).

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* See footnote on p. 4 ante.

6. Is it your experience that there are sufficient welfare officers available so that a report may be obtained whenever the judge would like one?

London said 'yes' for the existing demand, though reports could not always be obtained as rapidly as might be desired. Of the District Registrars 31 said 'yes' and 11 said 'no', though some of the former added that reports would be obtainable more quickly if more welfare officers were available.

7. When a report is asked for, what is the average time taken to furnish one?

It takes only 3 - 4 weeks in London. In the provinces the period varies from as little as 3 weeks in five Registries to as much as 3 months in four and even 5 months in one, the provincial average being approximately 6 weeks. But it seems that arrangements can often be made for expediting reports in particular cases.

8. In what proportion of cases have you found that a welfare officer's report has confirmed that the proposed arrangements are the best?

London felt that this was a question for the judges and did not attempt to answer it, but 38 of the District Registrars did so: 5 replied 'all' (except of course where custody was in issue), 2 replied '99%', 3 replied '95%', 5 replied '90%', 7 replied 'practically all', 'almost nil', 'about all' or 'most cases'. On the other hand 1 replied 'about half'. It seems fairly clear that in the very great majority of uncontested cases the report confirms that the proposed arrangements are best.

9. In roughly what proportion of cases where there are children are supervision orders made under section 37?

London said '1 in 300'. In the provinces the highest was 6% (one Registry) and the lowest 0 (four Registries). The average for the 36 District Registries which gave a numerical answer was 1.3%.

10. Do the judges ever interview the children themselves?

London said 'not usually' if there is no contest. 26 of the District Registrars reported that this does occur, though sometimes extremely rarely (e.g. 'exceptionally', 'once in six years') and sometimes only in contested cases.

11. Have you reason to think that arrangements approved by the court are sometimes not observed by the parties after decree absolute?

London said it was not uncommon for this to be observed on subsequent maintenance applications (and that changes often occurred because the position between parents and children may be fluid at the time of the decree nisi). Ten District Registrars answered in the affirmative, though some said only 'occasionally'; 26 answered negatively; and the rest did not commit themselves.

12. Have you known of any cases in which a decree absolute was never made because satisfactory arrangements were not proposed? If so, how many?

London was unable to answer this. Five District Registrars answered in the affirmative, Southend giving the highest figure, which was 4.

13. Do you think that the Matrimonial Causes Rules should be amended to require the petitioner to give more details in the petition of (a) the present situation of the children and (b) the arrangements proposed (e.g. the accommodation where the children will live or the arrangements for access by the parent who does not have custody of them)?

London thought not, because of the fluidity of the situation at this stage. The District Registrars were almost evenly divided: 22 favoured the suggestion and 20 did not.

14. Should a respondent who does not enter an appearance be invited nevertheless to state in writing whether he considers the arrangements proposed for the children to be satisfactory?

London was inclined to think not, but a slight majority of the District Registrars were in favour: 24 as against 18.

15. Generally do you consider that the system is working satisfactorily?

Practically every answer was in the affirmative, though several were qualified. Only one registrar answered 'no', but one other said almost as much.

16. On the basis that the number of welfare officers is unlikely to increase substantially in the next few years, what improvements in the system would you suggest?

London made no suggestions. The suggestions made by District Registrars are set out in Appendix B.

C. Conclusions

1. In their answers to the factual questions the registrars naturally tended to corroborate the answers given by the judges; but the registrars differed markedly from the judges in their opinions on whether the present system is working satisfactorily. Whereas a significant number of judges consider that it is not, the registrars are almost unanimous in thinking that it is.

2. Are registrars more likely to be correct in their impressions of the working of the system than judges? It is difficult to say: judges question petitioners personally about the proposed arrangements, whereas registrars are frequently not present in court at the hearing of the petition; on the other hand registrars are often concerned with a divorce case over a substantial period of time while they are dealing with interlocutory matters and maintenance questions (though in these they may not meet the parties themselves). On the whole, perhaps a little more weight should be attached to the views of the judges.

3. Notwithstanding the almost unanimous opinion of the registrars that the system is working satisfactorily, it is of interest that a small majority of those outside London were in favour of the minor amendments canvassed in Questions 13 and 14, namely that a petitioner should be required to give further details in the petition and that a respondent should be invited to state in writing if he considers the proposals satisfactory.

4. Of the suggestions made in response to the final Question (see Appendix B) the most significant were that a skilled person should decide if the arrangements are satisfactory, and that the whole question should be dealt with before the hearing of the petition. These suggestions are considered further in the last section of this report (post pp 37 et seq.)

IV. REPLIES OF DIVORCE COURT WELFARE OFFICERS AND OF A SAMPLE OF LOCAL AUTHORITY CHILDREN'S OFFICERS TO QUESTIONNAIRES ISSUED BY THE HOME OFFICE

The Home Office kindly agreed to send questionnaires to the fifty Divorce Court Welfare Officers and to selected Local Authority Children's Officers. Some of the questions were devised by the Home Office (a few not being relevant to this enquiry) and some by me.

WELFARE OFFICERS

A. Preliminary

All fifty officers replied.

The picture in London is of course very different from that in the provinces, as the Royal Courts of Justice are served by a team of full-time Welfare Officers, consisting of a Senior Court Welfare Officer and three assistants. In the provinces the Principal Probation Officer acts as Divorce Court Welfare Officer, combining this with his other duties, and often delegating much of the actual work to other probation officers. Because of this divergence of practice it has been necessary to differentiate between London and the provinces in considering the answers to many of the questions asked.

B. The Questions and Answers (excluding those not relevant to this enquiry)

1. In how many divorce cases where there were children under 16 involved were you asked to make enquiries during 1966?

The officers stated that the number of enquiries which they were ordered to make in London in 1966 was 790 and in the provinces 1,703 (ranging from 0 in Carmarthenshire to 140 in Liverpool), making a total of 2,493.

2. Would you favour a suggestion that enquiries should be made in a higher proportion of such cases?

29 replied 'yes' and 10 replied 'no'. Among the 10 were 3 of the Royal Courts of Justice officers. It is clear therefore that the great majority of officers in the provinces would like to see more orders for reports.

3. If your answer to the last question is "yes", then, assuming that it would be superfluous to make enquiries in all cases, could any clear line be drawn between the type of case in which an enquiry is desirable, and those in which it is not?

Situations mentioned as meriting an enquiry included the following: if the children were to be split, given to a person intending to remarry, to a parent alleged to have treated his spouse with cruelty, to a parent cohabiting with a non-spouse, or to a wife respondent. Others were if a girl was to be placed with her father, if difficulties were likely regarding access, or where there was a contest as to custody, insufficient information or the slightest doubt. One officer doubted if much would be gained by making an enquiry in the case of a child under the age of five or over that of fourteen.

Two officers considered that there should be a report in all cases. Three suggested that the officer should be allowed to inspect the petition before the hearing in order to advise the judge whether a report was desirable. It was pointed out that experience shows that it should not be too readily assumed in any case that an enquiry is not necessary.

4. If you think a line of this kind could be drawn, how would this affect the number of cases referred to you?

Most naturally replied that the number of cases would be increased, some saying it would be doubled.

5. If any of your answers mean that there would be more enquiry work to be done, how would this affect the organisation of work in your area?

As regards the affect on organisation in the provinces 15 stated that more staff would be needed, but 17 thought that the additional work could be absorbed by existing staff.

A number recommended the appointment of a full-time welfare officer (as at the Royal Courts of Justice) and Cornwall and Plymouth said that they are considering plans to appoint a joint full-time officer.

6. Are you asked to make enquiries before the hearing of the petition?

The London officers replied that they frequently are. The position appears to be different outside London: 13 officers answered 'no', and several others said 'rarely', or 'occasionally', or 'only if the child is in the care of a local authority'.

7. Are you consulted at any stage on the question whether it would be useful to have enquiries made?

The London officers said 'sometimes', but almost all the provincial officers said 'no', though a few said they are consulted occasionally.

8. How often in 1966 did you:

(a) make enquiries yourself?

(b) transfer enquiries to officers in your own area?

(c) transfer enquiries to other areas?

The answers for the provinces showed great diversity. As regards delegation, the extremes ranged from one court where the welfare officer made 1 enquiry himself and delegated 17, to another where the officer made 80 enquiries himself and only delegated 4. The majority of officers had performed more enquiries than they had delegated. As regards transfers, some provincial officers transferred very few cases, but one transferred 33 cases as against only 5 when he or his assistants made the enquiry. The Senior Officer at the Royal Courts of Justice made 87 enquiries himself and transferred 374 to other areas.

9. Can you estimate the amount of work involved in an average enquiry (e.g. by man-hours)? How much time did you spend on your last enquiry?

Only very rough approximations were possible of course, and answers varied a good deal. The smallest average time for a report was 3 hours and the largest was '20-60 hours including travelling time'. The Senior Officer at the Royal Courts of Justice replied 'from an hour or so to perhaps months'. The median figure for the average time was about 10 hours (though unfortunately in some replies time spent travelling was not included). The largest time quoted for the most recent report undertaken was 50 hours.

10. Approximately what proportion of your own working time is taken up by making these enquiries?

Officers in the provinces stated that the proportion of their working time taken up by making these reports was between 2% (the lowest) and 50% (the highest - though this officer unfortunately took into account other Divorce Court welfare work).

11. Are you generally informed of the outcome when you are asked to make an enquiry?

About a quarter of the officers stated that they are not generally informed of the outcome of cases. One officer enclosed

a copy of a form which he had devised on which the Registrar could inform him of the result.

12. How many supervision orders were made in 1966 at your court?

Officers stated that about 50 supervision orders had been made in London in 1966 and about 300 in the provinces (two officers not being able to give a figure). The number made by courts outside London varied markedly: six courts made no such orders at all and Leeds made only 1. On the other hand Bradford made 31. The average for the provinces was about 7.

13. Can you estimate in any way the amount of work involved in an average supervision case (e.g. by man-hours per year)?

The answers ranged from 6 to 52, with a median figure of about 23 (though in some replies travelling time was omitted). Several officers pointed out that more time has to be devoted to a case in the early stages than later on.

14. Are enquiries always made before a supervision order is made? If not, would your experience show this to be desirable?

The great majority of officers stated that enquiries are normally made before the court makes a supervision order (though the London officers said that this is not always so). Where enquiries are not made, officers thought that they ought to be.

15. Are you consulted on the question whether a supervision order should be made?

26 provincial officers stated that they generally are consulted and 15 that they are not. The London officers said that they quite often are, depending on which judge is trying the case.

16. Is it your impression from the cases in which you have been concerned that the making of a supervision order turned out to have been beneficial?

The officers were virtually unanimous that in their experience the making of a supervision order has proved to be beneficial.

17. Would you favour the introduction of a power for the divorce court, as an alternative to making a supervision order, to make an order for an annual or twice-yearly visit to a child with a duty to report if a change in the arrangements appears desirable?

22 of the provincial officers replied 'yes' and 20 replied 'no'. (It is possible that some of the latter misunderstood the question and thought that the suggestion was that the power to order

supervision should be abolished and replaced, rather than merely supplemented by, this more moderate kind of order). On the other hand all four of the officers of the Royal Courts of Justice insisted that this can already be done and is in fact frequently being done in London.

18. Do you know of any cases where supervision was not ordered, and the arrangements for the children approved by the court were not observed?

18 said that they did, and 26 that they did not.

19. Do you think a conference of court welfare officers should be called from time to time?

A very large majority of the officers (43 as against 7) thought that a conference ought to be called from time to time. Some suggested that this might be on a regional rather than a national basis.

20. The final question invited Welfare Officers to make suggestions for reform. 19 offered none. Suggestions made by the others are set out in Appendix C.

CHILDREN'S OFFICERS

A. Preliminary

No attempt was made to sound the opinion of all local authority children's departments and questionnaires were sent to a sample of 24, of whom 21 replied.

In a few cases the replies were signed by the Town Clerk or Clerk to the County Council and not by the Children's Officer.

B. The Questions and Answers (excluding those not relevant to this enquiry)

1. Are you notified by the court of divorce proceedings in respect of the parents of a child in the care of your local authority or receiving advice, guidance and assistance under section 1 of the Children and Young Persons Act 1963 or receiving Approved School after-care?

About half replied that as regards children in care (but not otherwise) they generally are informed.

2. Do you have adequate opportunity to ensure that your views on the question of the future custody of a child who is the concern of the local authority are considered by the court?

Again about half said 'yes', though some restricted this to those cases (not all) where they knew of the proceedings. Much seemed to depend on the state of relations between the children's department and the Divorce Court Welfare Officer: in some areas it appeared to be good, but in others less so. One children's officer mentioned a case where the judge, on the recommendation of the welfare officer, had ordered that a child who was in the care of the local authority be placed in the mother's custody under the welfare officer's supervision, without any effective consultation with the local authority first.

3. Are you asked to make enquiries in connection with section 33 of the Matrimonial Causes Act 1965 about children who are not in the care of your local authority?

Just over half said 'no', 2 said 'yes', and the others said 'seldom', 'rarely' or 'occasionally'.

4. How often are children committed to the care of your local authority under section 36 of the Matrimonial Causes Act 1965? (i.e. where it is 'impracticable or undesirable for the child to be entrusted to either of the parties... or any other individual')

The answer was 'very few'. Of the authorities asked, Plymouth has easily the most, with 14 at present. Manchester has only ever had 2. Several authorities have had none.

5. Is it your impression that appropriate use is made of this provision? If not, is it used too sparingly or too often?

Of the 14 who were able to answer this question 9 considered that too sparing use is made of this power. None thought it was used too often.

6. How often is the local authority asked to supervise children under section 37 of the Matrimonial Causes Act 1965?

Several authorities have never been asked to supervise. A small majority of those asked have had a few cases.

7. Is it your impression that the making of a supervision order was justified in the cases where your local authority has been so appointed?

All but one who answered this question said 'yes'.

8. Would you favour the introduction of a power for the divorce courts, as an alternative to making a supervision order, to make an order for an annual or twice-yearly visit to a child with a duty to report if a change in the arrangements appears desirable?

Only 8 favoured this suggestion and 12 were against, chiefly because a supervision order permits of flexibility anyway. (cf. Question 17, p. 21 ante.)

9. Is it your impression that, where there is no supervision, the arrangements approved by the court under section 33 of the Matrimonial Causes Act 1965 are observed?

Only a minority were able to give an impression: 5 thought 'no' and 3 thought 'yes'.

10. Would it be an advantage if the court officials were to be required to notify the local authority of the name and address of every child whose parents were obtaining a divorce, simply so that the authority would have an early warning of where trouble might later arise?

16 thought it would be an advantage and 4 thought it would not. One (and this was a case where the Town Clerk signed the reply) thought it might be regarded as an infringement of personal liberty.

11. It may be suggested that the procedure under section 33 of the Matrimonial Causes Act 1965 for deciding whether the arrangements proposed for the care and upbringing of a child are satisfactory should be modified, and that, instead of the matter being considered by the judge in an open court at the hearing of the petition, it should be dealt with, e.g. by the Registrar, at a private hearing with both the parents in attendance. From your own point of view, would such a change be desirable? and what would be the most satisfactory means of enabling the local authority to assist the court to reach its decision at such a hearing?

18 supported the suggestion and only 1 opposed it. To the second part of the question, asking how the local authority could best assist the court to reach its decision at such a hearing, many officers replied that they should be asked to make reports in appropriate cases and subsequently to attend the hearing either in those cases, or in all cases, or in cases where they were already concerned with the families in question.

12. Have you any general improvement to suggest in the principles or practice of Part III of the 1965 Act?

There were a few suggestions which related to section 33. These are set out in Appendix D.

Conclusions from the Replies of the Welfare Officers and Children's Officers

1. It is apparent that the welfare officers consider that they are performing a useful role both in making enquiries for the purpose of s.33 and in carrying out supervision orders under s.37. If this is so (and other evidence seems to confirm that it is: see, e.g., the replies of the judges to Question 8(c), ante p.7) there would seem to be a case for arranging for these officers to become more closely associated with the running of the system, rather than regarded as outsiders whose services should only be called upon in exceptional circumstances. Thus the officers ought perhaps to be allowed to participate in the making of the decision whether or not an enquiry should be ordered before the proposed arrangements are approved, and whether or not a supervision order should be made. At the very least each Registry should devise machinery to ensure that an officer is always informed of the decision made by the court in a case where he has been asked to make an enquiry into the arrangements.

2. One important advantage which should result from participation by welfare officers in the decision making process is a less marked variation between courts in the use they make of their statutory powers. At present, as the judges' replies show, there is a very wide divergence of judicial practice in these matters; and this must surely be a matter for concern.

3. If the part played by welfare officers is to grow it would be wise to consider the creation of some full-time posts in the provinces as well as in London. This would sometimes involve a joint appointment by the Probation Committees of adjoining areas (such as is being currently considered by Cornwall and Plymouth).

4. Among welfare officers in the provinces there is a fairly widely held view that courts should order enquiries in a higher proportion of cases than at present before approving the arrangements. But it must be borne in mind that officers are unlikely to know the circumstances of the cases which are not referred to them for enquiry. It should also be remembered that the majority of judges state that they would not wish to refer a greater number of cases if welfare officers were more plentiful (Q.8(b), ante, p. 7) and that a very high percentage of the proposed arrangements which are at present referred to officers are confirmed as a result of the enquiry (Q.9, ante, p.7).

5. There seems to be fairly general agreement among the officers that some flexibility is needed in the number of visits which should be made by an officer when a court decides that a child is in need of some form of supervision. Opinion varied as to whether this could best be achieved within the framework of the existing type of supervision order made under section 37, or whether a different kind of order should be introduced as an alternative. In any event it would seem desirable to remove the restriction in section 37 (1) whereby an order can only be made while the child is 'committed to the custody of any person'. (Apparently the power to order supervision was introduced in order to provide a means whereby the court could be informed if a need arose for a custody order to be varied or discharged: Royal Commission on Marriage & Divorce, 1956, Cmd. 9678, § 396; and this presumably accounts for the present limitation on the court's power to make a supervision order to situations where a custody order has also been made).

6. There seems to be a need for less cumbersome machinery when a welfare officer asks the court to discharge or vary a supervision order under section 37(6).

7. There is clearly a need for close liaison between welfare officers and local authority children's departments, particularly when the child in question is already 'in care'.

8. There is also a need for occasional, if not regular, conferences of welfare officers, which might be held on a regional basis in order to save travelling time.

9. Perhaps the most significant feature of the replies of the children's departments which were questioned, was the practically unanimous support for the suggestion that the proposed arrangements should not be considered in open court when the petition is being heard.

10. It is also clear that local authorities would in general welcome the introduction of a practice whereby they were informed at an early stage of divorce proceedings of the names and addresses of children who are affected thereby.

Note. A valuable Report on Divorce Court welfare work has been prepared by the South West Group of the Conference of Principal Probation Officers. This Report is based on a detailed questionnaire which was sent to all P.P.O.s and Divorce Court Welfare Officers in England & Wales in 1967. Copies can be obtained from Mr. F.A.Terry, D.F.C., Principal Probation Officer for Cornwall whose address is 13, Treyew Road, Truro.

V THE FOLLOW-UP SURVEY

A. Preliminary

1. One of the weaknesses of the present system is that there is no check that the arrangements which are approved by the court are subsequently observed by the parties, except in the relatively rare cases where a supervision order is made. There is in fact nothing to stop a petitioner who has obtained a decree nisi on the basis, for example, that she will continue to look after the children, from handing them over to the respondent or to a third person the very next day. A more likely eventuality perhaps, is for the person who has the children to remarry and move to a new home where the conditions in which the children live are quite different from those which obtained at the time of the hearing of the petition. One wonders, therefore, how frequently changes of a material nature do take place in the arrangements which have been approved by the court.

2. Professor O.R.McGregor of Bedford College, London, advised that in order to mount a really satisfactory enquiry into this problem it would be necessary to take a fairly large and broad-based sample. As this would have been a costly operation, it was decided instead to conduct a limited and rather unscientific survey, at all events in the first instance, taking a random sample from cases heard in the Cambridge District Registry. In addition Mr. John Tiley, then a member of the Faculty of Law at Birmingham University, kindly agreed to conduct a similar survey based on cases dealt with in the Birmingham District Registry. All that we could hope to achieve from these two limited surveys was some provisional indication of whether a major problem does in fact exist.

B. The Survey

1. From the records at the Cambridge District Registry 37 cases were chosen at random where the decree nisi had been pronounced approximately twelve months previously. These case concerned parties living not only in Cambridgeshire and the Isle of Ely, but also in Suffolk, Hertfordshire, and Huntingdonshire. A letter was then written to the person who, according to the approved arrangements, was intended to have care of the child, asking for permission to call, though without specifying the precise nature of the enquiry. Unless a reply was received refusing permission,

or unless the letter was returned by the Post Office, a visit was then made to find out whether the arrangements were actually being observed.

2. The result of the Cambridge survey may be summarised as follows:

Letters written to		37
Replied refusing to be visited	6	
Had left address and could not be traced	4	
Address in petition non-existent	1	
		11
Visits therefore made to		26
Child now living at new address	5	
Person in charge now remarried	4	
Circumstances as stated in petition found to be untrue	1	
		10
Arrangements found to be still precisely as approved		16

The following points should be noted:

(a) It is probable that some at least of the 6 who refused to be visited had disregarded the approved arrangements.

(b) The case where the address in the petition was found to be non-existent was rather remarkable. The petition stated that the children were living with foster-parents, 'Mr. & Mrs. X, 27 Acacia Avenue, Barchester'* and I wrote to that address. The letter was eventually returned as there is apparently no such road in Barchester. Several similar addresses had been tried by the Post Office but without success. I then asked the solicitors who had acted for the petitioner if they had any comments and, after checking their records, they confirmed that this was in fact the address which their client had given them. (They had not of course realised that it was bogus). It subsequently transpired from other sources of information that apparently the children are indeed living with Mr. & Mrs. X, but at a town some forty miles away from

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* Not the real address!

Barchester. Where they were living at the time the proposed arrangements were approved remains a mystery.

(c) The figure of 4 for persons who had remarried may be too low as it was not always clear whether a remarriage had taken place. No doubt in some cases the court would have been informed that a remarriage was envisaged, and if so this would not constitute a departure from the approved arrangements.

(d) The case where the circumstances described in the petition were found to be incorrect was interesting and rather disturbing. A husband petitioner had stated in his petition that his four year old son would continue to live with him and would be looked after by him with the assistance of a married couple 'who live at the same address'. It transpired that the married couple in fact live next door. One is bound to wonder whether the arrangement would have been approved if the judge had known of this discrepancy (though of course it is just possible that the facts were corrected when the petitioner gave evidence at the hearing).

3. The survey in the Birmingham area by Mr. Tiley was hampered by shortage of time. Cases were selected from the Birmingham District Registry on the same basis as at Cambridge and letters were written to 16 people. Of these 2 refused to be visited. Owing to practical difficulties it did not prove feasible to make contact with 4 others, but of the remaining 10 who were visited all were found to be adhering to the arrangements which had been approved, (apart from the fact that 4 had remarried).

C. Conclusions

1. It is inevitable and in most cases unobjectionable that changes should take place after the proceedings have been concluded. It is probably also inevitable, though highly objectionable, that false information should sometimes be presented to the court when the arrangements are put forward for the court's approval.

2. There would appear to be a need to develop better machinery for scrutinising the arrangements which are proposed by the petitioner. There would also be certain advantages if a method could be devised to ensure that the court is subsequently informed of any proposal for a change in the approved arrangements, so that this could be

considered from the standpoint of the child's welfare.

These possibilities are considered further in the final section of this report, post, pp. 37 et seq.

VI APPEAL TO THE PUBLIC

A. The method used

It was decided to ask the John Hilton Bureau of the News of the World to assist in trying to discover the opinions of the members of the public with experience of the problem. The Bureau were extremely helpful and quickly prepared an article of about 450 words, based on a draft which I had written for the purpose, which was published in the News of the World for Sunday, 4 December 1966. The article invited readers with first-hand experience to write to the Bureau with their views.

No less than 189 letters were received in reply, though the Bureau considered this a relatively small response and indicative of a not very widespread feeling of dissatisfaction among their readers. Moreover a large proportion of the letters were not really relevant to the operation of section 33 of the Matrimonial Causes Act, though 35 contained observations or information which were definitely of help to the present enquiry. Some analysis of these letters follows.

B. The response

1. There were four letters which were complimentary to the judiciary. Thus one ex-petitioner wrote 'The judge at my divorce proceedings enquired minutely into the conditions my child was provided with...'; and an ex-respondent declared that 'The judge who heard my husband's case was very fair to both sides. He made sure that the children were well cared for'.

2. Not surprisingly, several letters were critical of the decisions reached. Thus one mother complained that her younger child had been entrusted to her husband's 76 year old mother; and a husband complained that his five children had been given 'to one of the biggest prostitutes in Leeds'.

3. Two letters were critical of the judicial approach to the problem. One accused the judge of taking things 'at face value', and the other alleged that the judge was 'not really interested'.

4. Six letters maintained that the court had been misled. One alleged that a father who had been given the care of his son had concealed the fact that another woman (already pregnant) was living with him; another, that the woman who was living with the husband (the writer's son) had undertaken to the court to give up her employment as a secretary in order to be able to look after his child, but had nevertheless continued in that employment; and another, that a mother had been allowed to keep the children after informing the court that they would live in a three bedroomed house and would be welcomed by her paramour, whereas when the writer (the father) called he found them all living in a damp basement flatlet and was told by the other man that he didn't want the children as he couldn't afford to keep them.

5. It was significant that eleven writers expressed a wish that a welfare officer (or other official) should take an interest in their children. Here is a selection:

'The court has never sent anyone to see how we are getting on'.

'I think the children of divorced parents should be watched by the children's officer like foster children are'.

'There should be someone to visit these children every so often'.

'Since getting custody....no-one has ever been to enquire whether (the child) is all right or not'.

'No-one bothered to see (the children) if they were all right.. They were of course'.

'I have never had a welfare officer visit me. But I have one regular now. And she is wonderful. In fact sometimes she only comes here to visit me and see how we are getting on and if we are allright'.

On the other hand there were three letters which were critical - two of the decisions made by the welfare officers and one of the fact of being visited by such an officer.

A further letter argued that the probation service should not be used for this purpose.

6. One correspondent complained of delay. The facts (subsequently verified by the solicitors who had acted for the petitioner) were that the husband obtained a decree nisi in February 1966, the court ordering an enquiry by a welfare officer. A report was made in May, but further enquiries proved necessary and reports were made by a different welfare officer in July, in August and again in

November, with the result that the arrangements (namely that the child should remain with the mother) were not approved until December, some ten months after decree nisi. There were undoubtedly special difficulties in this case, but it is hardly surprising that the correspondent felt dissatisfied.

7. The problem caused by a change of circumstances after the hearing was illustrated by one letter. The court had approved an arrangement whereby the mother kept the child, as the grandmother was able to look after it while the mother was at work. Six months later the grandmother suffered a coronary thrombosis and thereafter could no longer help in this way. (The letter did not relate what happened).

C. Conclusions

1. Sometimes, no doubt, the wool is pulled over the court's eyes, though this is hardly surprising when frequently only a few formal questions regarding the children are asked at the hearing of the petition.

2. It would be a mistake to assume that all sections of society resent intrusion by officialdom: for some at least undoubtedly welcome an occasional visit by a trained and sympathetic official.

3. It appears that on occasions (though relatively infrequently) there may be a substantial delay before the arrangements are approved by the court. This may be difficult to avoid, but it might be an advantage if the practice which some judges adopt of receiving and dealing with a welfare officer's report by post in order to save the time of a formal application in chambers could become more general.

VII DISCUSSIONS WITH SOLICITORS

1. Four experienced provincial solicitors were consulted. They considered that the present system is unsatisfactory. Their reasons included the following:

(a) The petitioner, whose word is generally accepted, is often tempted to gild the lily. (Indeed, some solicitors, it was suggested, may even encourage this; for it may be difficult

not to advise a husband whose wife has the children and who is anxious to obtain a divorce speedily, that if he wants a decree with the minimum of delay it would be an advantage to tell the judge that when he visits the children he notices that they are being well looked after).

(b) In taking instructions for the petition the solicitor merely asks for sufficient information regarding the children to compose a few fairly formal sentences. The court needs far more information than this.

(c) If a welfare officer's report is ordered, a long delay may be involved, especially if the judge insists (as many but not all do) on a chambers appointment to consider the report.

(d) A respondent who has control of the children but who has not entered an appearance may never even know what arrangements have been approved by the court.

(e) Subsequent changes concerning the children may take place quite freely. (Thus in one case which was mentioned, the arrangement which had been approved was that the children should continue to live with the respondent wife, who had been living with the co-respondent, but who shortly after the decree abandoned him and went to live with a man in his sixties).

Suggestions made included the following:

(i) Every divorce registry should have a full-time welfare officer attached to it. More (and perhaps all) cases should be referred to the welfare officer for enquiry, though not necessarily for as full a report as is generally prepared at present. To meet the expense higher court fees should be charged in cases where children are involved.

(ii) Both parents should be required to file evidence concerning the children, and more care should be taken to check their evidence.

(iii) The proposed arrangements should be considered at an earlier stage (perhaps by the registrar before the case is set down) and not as an appendage after the ground for divorce has been established.

(iv) Where a welfare officer's report has been made the judge should read it privately and, if satisfied, arrange for the registrar to notify the petitioner by post, rather than insist on a chambers appointment.

(v) There should be a duty to report to the court any subsequent material change concerning the arrangements for the children, perhaps with mild criminal sanctions in default.

(vi) Supervision orders should perhaps be made more frequently, though an objection to that would be that such orders appear, unfortunately, to resemble probation orders.

2. Six experienced London solicitors and one legal executive, each from a different firm, were consulted. Two thought the present system fairly satisfactory; three thought it distinctly unsatisfactory; and two thought that it was serving a useful purpose but could be considerably improved.

Points that were made included the following:

(a) It is not the case, in London at least, that solicitors encourage clients to gild the lily.

(b) The court very often appears to be merely 'rubber stamping' the proposals.

(c) The section places an impossible task on the judge.

(d) This should not be a matter for the divorce court at all, but for the local authority if there is a specific need, for why should the children of divorced parents be shown more solicitude than others?

(e) It would not be practicable to insist on the attendance of the respondent or on his filing an affidavit.

(f) It should be remembered that if the petitioner fails to disclose to the court the full facts as to the arrangements proposed, the approval thereof by the court may be nullified: Shelton v. Shelton (1965) 109 Sol. J. 393.

(g) It is in the children's own interests that the divorce proceedings, once started, should be concluded with reasonable despatch.

(h) The very fact that there has been a matrimonial dispute makes the parties jealous as to the welfare of the children,

and the party who has not got possession will be quick to bring any default by the other to the attention of the court.

(i) It would not be feasible to insist on all subsequent changes in the arrangements being reported to the court.

(j) The section is fundamentally unsound in its conception and is particularly inept as regards its application to nullity and judicial separation.

After discussion the seven London practitioners reached broad agreement that the following reforms would be desirable:

(i) The petitioner should set out the proposed arrangements in an affidavit rather than in the divorce petition.

(ii) A copy of this affidavit should be served on the respondent, who should be asked to acknowledge receipt of service and would be warned that any deception of the court concerning the arrangements might invalidate the decree absolute.

(iii) The registrar should consider the affidavit (requiring the petitioner to attend if necessary) before granting the registrar's certificate, and only grant it if satisfied as to the arrangements.

(iv) The registrar should deal with maintenance of the children at the same time, making an interim order if need be. The future of the former matrimonial home would also be settled at this stage.

(v) Names and addresses of all children concerned should be notified to the local authority (and perhaps the authority should be asked to make an occasional check on the children subsequently).

(vi) Suggestions (iii) and (iv) might make the inter-locutory stages of the proceedings longer, but the interval between decree nisi and absolute could be reduced or possibly even eliminated.

(vii) A joint custody order should be the rule rather than the exception when both parents are still interested in the children.

(viii) Supervision orders should be made a little more

frequently, e.g. whenever the parent in possession has been a patient in a mental hospital and, if possible, whenever there is a real risk for the child.

3. In an article concerning the problem published in the New Law Journal in February, 1967, I asked that practitioners who had any suggestions should send them to me. Only one did so, his main suggestion being that the local authority children's officer should be asked to make a report before the hearing in all cases. He also considered that when a supervision order is made the children's officer is a more appropriate person to exercise the supervision than a probation officer.

4. I wrote to The Law Society and was told that their Sub-Committee on Family Law will be glad to consider the problem.

VIII THE POSITION IN OTHER PARTS OF THE UNITED KINGDOM

A. Scotland

1. Although section 33 of the Matrimonial Causes Act 1965 applies only to England, substantially the same principle is applied to Scotland by the Matrimonial Proceedings (Children) Act 1958, s. 8 (1). Moreover, by section 11 of that Act the court is expressly empowered to appoint an officer to investigate and report to the court on the circumstances of the child and the proposed arrangements; and sheriffs are required to designate suitable officers for the purpose of the section. Apparently in cases of doubt the court generally obtains a report from the local authority children's officer, though sometimes a member of the Bar is used for this purpose.

2. A Scottish judge has stated that all his judicial colleagues take the view that the rule is working satisfactorily in Scotland, but that it would be an advantage if statutory provision could be made for the enforcement in England of requests for reports and supervision made by the Court of Session, with reciprocal provision for requests by English courts.

3. The Associate Dean of the Faculty of Law of Edinburgh University (Mr. W.A.Wilson) kindly made some enquiries among members of the Scottish Bar. The seven members whom he consulted

all regarded the provision as having a 'real and considerable effect on divorce practice', and his enquiries led him to conclude that the judges have a very keen sense of their responsibility in this matter.

4. The picture in Scotland appears somewhat better therefore than in England. It is difficult to know why this should be so; but perhaps one slight advantage which the Scottish courts enjoy is the express statutory authority to appoint an officer to make an investigation. The authority for the use of a court welfare officer in England is far less tidy and appears to depend entirely on Practice Notes (see [1950] W.N. 316; [1959] 3 All E.R. 780; Rayden, 10th ed., p. 708). It might be a good idea to take the opportunity of any new legislation on this subject to follow the Scottish model and include express authority for the ordering of investigations in the Act itself.

B. Northern Ireland

Northern Ireland has no provision corresponding to our section 33.

IX SOME GENERAL CONCLUSIONS

A. THE PROBLEM

1. Have we the right to interfere in a child's upbringing?

If the State is asked to dissolve a marriage it is surely entitled, if not positively bound, to require an assurance that any dependent offspring of that marriage are not prejudiced thereby, or at least are not prejudiced to an extent greater than is inevitable from the fact that their parents' marriage has failed.

2. Can a fully satisfactory assurance for the child's upbringing be obtained?

Plainly it cannot. Questions may be asked, answers given on oath and home conditions inspected, but in the end (and rightly no doubt) a large measure of trust will have to be placed in an individual - generally one of the parents. But the gravity of the consequences for the child of the disruption of the marriage must be made quite clear to the parents, and they must be left in no doubt that in consequence they now bear a special responsibility to

the child. Accordingly, whatever the method that is used to obtain the required assurance, it is essential both that it be thorough and that it be seen to be thorough. Perhaps the greatest weakness of the present procedure is that it sometimes gives the impression of superficiality.

3. Can any worthwhile machinery be devised?

Practical difficulties abound. Judicial strength is not unlimited; trained social workers are in short supply and must not of course be required to devote a disproportionate amount of time to these children as compared with others in need; and divorce proceedings must not be unduly protracted. Nevertheless even the present machinery, according to the predominant view among those consulted, is of some value; and after nearly ten years of operation it may well be possible, even within the limits of our available resources, to achieve some improvement.

B. THE CONSIDERATION OF THE PETITIONER'S PROPOSALS

4. Where and when should this take place?

An open court is probably not the best setting for a thorough consideration of arrangements for the care and upbringing of a child; and it would seem preferable for this to take place in chambers.

When the respondent is not defending the petition, it is suggested that the consideration should take place before the hearing of the petition (though if matters were still in a state of flux, as is sometimes the case, an adjournment might be necessary). If the petition is being defended, the arrangements would be considered after the hearing of the petition. It would be an advantage if there were a requirement that the application for the decree to be made absolute should in every case be accompanied by a confirmation that the approved arrangements were being observed.

5. What matters should be considered?

The consideration (in chambers) of the petitioner's proposals for the child should preferably extend to questions of formal custody (which should be jointly awarded, it is suggested, if both parents appear fit and anxious to take an interest in the child's future), care and control, rights of access, maintenance (though an interim order might be necessary at this stage) and any need for a supervision order. At the conclusion it should be ensured that the parents were left in no doubt as to their respective

responsibilities and rights in respect of the child.

6. Should the parties be present?

The petitioner would first have been required (it is suggested) to set out full details of the proposals in an affidavit, a copy of which would have been served on the respondent. In view of the importance of the matter the petitioner ought also to be obliged to attend the hearing in chambers so that elucidation of any doubtful points could take place by direct questioning.

There would be considerable advantages in securing the presence also of the respondent, particularly if the child was living with him or her. The respondent therefore should certainly be encouraged to attend. Moreover it is arguable that the court should be given power to order such attendance, on pain of punishment in default; but as this would no doubt give rise to difficulties in practice, it might be unwise to make this innovation, at least initially, and to see first what could be achieved by persuasion.

7. Who would preside?

If there were a contest as to custody, or as to care and control, the judge would preside at the hearing in chambers. This would also be necessary if there were a dispute as to paternity or as to whether the child was a child of the family. In all other cases it is suggested that the registrar should preside, and formulate recommendations, which would subsequently be submitted to the judge for approval (either at the hearing of the petition if this were undefended, or if not, in which case the petition would already have been heard, in chambers, or even informally in a straightforward case).

8. Should the judge or registrar be assisted by an expert?

This would be a great advantage. The judge or registrar may lack the special skills needed for deciding what is best for the child and it would no doubt be of great help to him to be assisted at the consideration in chambers by the divorce court welfare officer or a child care officer. But our resources at present would hardly extend to having such an expert present on each occasion and so this suggestion is hardly feasible. However it would probably suffice if the registrar were to arrange for an officer to attend in those cases where the affidavit suggested that his advice might be particularly valuable; and if neither the divorce court welfare officer nor a child care officer were

available, then perhaps a juvenile court magistrate might be invited to attend instead.

9. When should the court order an investigation and report by a welfare officer?

Clearly this should be ordered, as at present, whenever there is any real doubt concerning the satisfactory nature of the arrangements. Moreover if the suggestion made in the preceding paragraph was implemented, the welfare officer might well be present at the hearing of a difficult case and so would have the opportunity of assisting the court in reaching its decision as to whether such an order should be made.

In general there does not seem to be any need, as far as the majority of courts are concerned, for reports to be ordered in a greater proportion of cases than occurs at present.

(Some minor changes which should be considered in connection with welfare officers' reports are that (a) the cost should be borne by the petitioner, rather than the public; (b) there should be reciprocal statutory authority for ordering such reports in England and Scotland; (c) the contents of a report should not be disclosed to the parents if this would be contrary to the interests of the child; and (d) the officer who makes the report should invariably be informed of the decision which is subsequently reached on it by the court).

10. Should the names of children be passed to the local authority?

It is suggested that the divorce registry should notify the relevant local authority children's department of the names and addresses of all children under 16 whose parents' marriages are the subject of divorce proceedings: most departments would welcome this on the ground that it would provide them with an early warning of where trouble might later arise (see ante, p. 24 Q.10). It would also alert the department to the need, as regards any child already in care, to make such representations to the court as might be desired when the arrangements regarding that child were being considered.

C. SUBSEQUENT CONTROL

11. Is there a need for some general form of on-going control?

It is doubtless a weakness of the present law that (unless a supervision order has been made) there is nothing to prevent a parent with whom the child is living under the approved arrangements

from handing the child to someone else at any time. It can be strongly argued that society should not wash its hands of the fate of the child once the decree has been made absolute, and that a parent should be required to obtain the court's consent before making any material change in the approved arrangements. This would of course be tantamount to making the child a ward of court.

Whatever the merits of such a reform, it seems fairly clear that it would swamp the courts, and the suggestion is unrealistic. A less drastic change should therefore be considered; perhaps that the person in charge of the child should be required to notify the court of any material change (with penalties in default) so that the court could then intervene if the change appeared undesirable from the child's point of view. But what could the court then do? The decree could not be rescinded. It is true that the arrangements could be reconsidered and if necessary the child transferred to the other parent; but this could be disastrous unless the other parent wanted the child, and if he did he could always apply, as at present, for a variation of the original custody order on the ground that the circumstances had changed. A further difficulty is that as time goes on it becomes increasingly undesirable to uproot the child. On the whole therefore it seems that the court can only act effectively in this sphere while it has the sanction of witholding the decree absolute; and it should at that stage consider the proposed arrangements on as long-term a basis as possible, bearing in mind such possibilities as the remarriage of a parent, or that a mother may decide to go out to work, and so on.

If there is reason for anxiety a supervision order can be made. Otherwise the parent will simply have to be trusted; and fortunately it is the case, no doubt, that the great majority of parents can be relied on to do their best for their children anyway.

12. Should supervision orders be made more often than at present?

Such orders are relatively infrequent, the Act stating that they can only be made in 'exceptional circumstances', and when a custody order has also been made (s. 37 (1)). But the evidence of the welfare officers was to the effect that supervision orders prove beneficial in practice (ante, p.21 Q.16); and there was some evidence that the public do not resent visits from trained and sympathetic officials (ante, p. 31). It might be desirable therefore for such orders to be made a little more freely (at least by those courts which are at present especially sparing in their use); and to facilitate this it is suggested that the section should be amended

by deleting the word 'exceptional'. The words confining the power to a period while the child is committed to a person's custody might also be deleted, though it was suggested above (paragraph 5) that an order for custody ought normally to be made by the court.

13. Would the welfare services be able to handle a larger number of supervision orders?

If the somewhat greater use of supervision orders were found to place too heavy a burden on welfare officers and child care officers (either of whom can at present be appointed) it might be possible to make use of voluntary part-time social workers for this purpose. It has been suggested recently by Lady Reading's Working Party* that voluntary workers could help in the after-care of offenders, and there seems no reason why they could not also help in this field. In fact this suggestion was made by a judge (see Appendix A, post, p.45 No.12).

14. Should the amount of supervision be specified in the order?

It is to be hoped that a supervision order will be made whenever a case gives rise to anxiety; but clearly the actual amount of supervision which will be needed will vary considerably from one case to another. It is arguable that a milder type of order would be appropriate in the less serious kind of case, requiring an occasional as distinct from a regular visit to the home. On the whole, however, the maximum flexibility should probably be preserved for the officer carrying out the supervision, and so a standard form of order would seem wise; but the judge or registrar could of course indicate informally at the time it was made whether or not this seemed to be a case where merely 'keeping an eye' on the child should suffice. (The procedure for varying or discharging an order concerning the child at the instance of the supervising officer (s.37(5)(6)) should if possible be simplified (see Appendix C (16) - (18), post, p. 51)).

15. Should the name of the order be changed?

In practice a supervision order tends to have criminal overtones and may look rather like a probation order made in respect of the child. A more suitable name might be a 'parental guidance order'.

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* Second Report of the Working Party on the Place of Voluntary Service in After-Care, which can be obtained from H.M.S.O. price 5/3d.

16. What should be done if such an order is not made?

Although if the case did not give rise to anxiety and thereby justify the making of an order, there would be no form of on-going control, it would be useful to explain to the parent in charge of the child that if advice were ever needed this could be sought from and would be gladly given by the local authority children's department.

D. GENERAL

17. Should the present organisation of divorce court welfare officers be modified?

The aim should probably be to move in the direction of a more specialised welfare service for courts exercising family jurisdiction. In London the secondment of probation officers for full-time work at the Royal Courts of Justice seems to have been a success and, if circumstances permit, other large cities might follow this example. Elsewhere a joint appointment, such as is being currently considered by Cornwall and Plymouth, might prove advantageous. Meanwhile conferences of divorce court welfare officers should be held, perhaps on a regional basis, so that common difficulties can be discussed.

18. How can wide diversity of practice be avoided?

One of the most striking facts to emerge from the replies of the judges to the questions submitted to them was the considerable variation between courts in their handling of the problem under review. Perhaps this was to be expected; but it is a little disturbing. If it were possible to arrange for an occasional conference to discuss policy in respect of this jurisdiction, rather along the lines of the meetings convened by the Lord Chief Justice to discuss sentencing, this might prove very helpful. For although the wise exercise of the court's jurisdiction under sections 33 and 37 is hardly as vital to society as the correct sentencing of criminals, it is not without its importance: for as one of the judges shrewdly observed in his reply to the questionnaire, this is practically the only important task which is left for the court to perform in an undefended divorce case today.

J.C.Hall
St. John's College,
Cambridge.

17th January 1968

APPENDIX A

The suggestions and observations made by the judges in answer to the question 'On the basis that the number of welfare officers is unlikely to increase substantially in the next few years, what improvements in the system do you suggest?' have been arranged under the following headings: (a) the mode of enquiry into the arrangements, (b) the timing of the enquiry, (c) subsequent action, (d) miscellaneous suggestions, (e) miscellaneous negative suggestions.

A * denotes that a second judge made the same or a substantially similar suggestion.

(a) The Mode of Enquiry into the Arrangements

1. Any change would be desirable which would 'raise the status of the enquiry'.

2. This farcical function should be taken away from the judges.

3. Petitions involving children should be heard only by specially experienced judges, and more time allowed.

4. Juvenile court magistrates should be used for this purpose.

5. This function should be transferred to a panel of experts, including a magistrate, except in cases of disputed custody.

6. Quite separate machinery is needed: an interim custody order should be made at the time of the decree, the child should become a ward of court, the question of the arrangements should then be referred to an advisory committee consisting of voluntary members of both sexes with the children's officer in attendance for investigation, and the committee should report to the court if the arrangements do not appear satisfactory.

7. The court is not the proper authority for considering detailed arrangements for the child, and the bulk of welfare officers' reports are unnecessary. Instead the local authority should be informed and the child should be put 'in care' in a limited sense.

8. The priorities are all wrong and the court should be much stricter.

9. Counsel and judges must ensure that proper attention is paid to this question: indeed it is about the only important matter left to try in undefended cases.

10. Both parents should be required to attend in all cases.

11. A respondent who is in charge should be ordered to attend.

12. If a third person is in charge or looks after the children while the mother is at work, that person should be called as a witness.

13. All adults living in the household or desiring access should be summoned to a round table conference.

14. If the petitioner proposes that the child should live with someone else, testimonials regarding that person should be produced.

15. A respondent wife who is not in charge should be asked to say if she considers the arrangements satisfactory.

16. The court should be empowered to appoint an independent medical consultant in appropriate cases.

17. The judges are at present too pressed for time to make a proper enquiry.

18. The court should insist that proper financial arrangements have been made by the father.*

19. All questions of maintenance should be dealt with at the same time.

20. The petitioner should file a supplementary affidavit with further details.

21. The court should have power to order the Official Solicitor to intervene.

22. The task of making reports should be transferred from welfare officers to local authority children's officers.

23. Children's officers should be asked to help.

24. Reports should be obtained from headmasters.

25. Less emphasis should be placed on material comforts (e.g. separate bedrooms) and more on whether the child will receive love and affection.

(b) <u>The Timing of the Enquiry</u>

1. No legal aid should be obtainable until the applicant has satisfied the local authority regarding the arrangements for children.

2. The court should refuse to grant a decree nisi unless

satisfactory arrangements have already been made.

3. The arrangements should be considered in chambers after decree nisi.

4. The court should deal with custody and maintenance immediately after decree nisi.

5. The decree should be made absolute so that remarriages can take place, and the arrangements should then be considered in the light of this.

(c) Subsequent Action

1. Supervision orders should be made more frequently.*

2. Preferably some system of supervision should take place until the child is 14 at least.

3. Courts should always make a supervision order for at least two years.

4. Courts should ask for annual reports by welfare officers until the child is 16.*

5. Where appropriate, welfare officers could be asked to make periodical reports as an alternative to the court's making a supervision order.

6. There should be a two year period of supervision by the children's department in all cases.

7. Local authorities should make periodic visits, and intervene if the position is unsatisfactory.

8. The court should always inform the local authority so that a child can be visited at least annually.

9. Names and addresses of all children concerned should be given to the welfare officer so that he can subsequently report to the court if he has qualms.

10. Instead of making a supervision order the court could suggest that the welfare officer 'keeps an eye' on the child.

11. Introducing a person in charge of a child to the welfare services has a valuable stabilising influence and is usually welcomed.

12. Voluntary part-time social workers should be recruited for follow-up work, thus enabling more frequent supervision orders to be made.

13. To ensure that no departure from approved arrangements takes place without cause, the court should be given power to take the child into its own custody if this occurs.

14. All changes should be reported to the children's department.

15. There should always be an order for custody and periodic visits and reports by welfare officers.

16. All material changes in the arrangements should be compulsorily notifiable, and the court could then refer the matter to the children's department if necessary.

17. Parents should be obliged to come before the court if the arrangements are changed.

18. A child should have the same welfare officer to look after its interests all the time.

19. Either there should always be supervision or the section should be repealed.

(d) Miscellaneous Suggestions

1. The court should never allow a decree to be made absolute unless the arrangements actually are satisfactory.

2. The decree absolute should be suspended for at least 12 months if the arrangements are not satisfactory.

3. An attempt should be made to assimilate the procedure so far as possible to adoption procedure.

4. No decree should be granted until a custody order has been made.

5. If a magistrates' maintenance order is already in existence a petitioning husband should have to lodge a certificate from the magistrates' clerk that payments are up to date.

6. More care should be taken of the child between the filing of the petition and the hearing.

7. The party applying for the decree to be made absolute should be obliged to certify that the approved arrangements are being carried out.

8. The greatest value of the whole system lies in emphasising the importance of the children's interests.

9. Ultimately there should be a Family Division of the High Court.

(e) Miscellaneous Negative Observations

1. It is a fallacy to think that the court has any viable option. Moreover it is the function of a court to decide issues.

2. The court should not try to supervise arrangements.

3. It is doubtful if society would tolerate more supervision orders than at present.

4. No sanctions should be imposed to make parents do their duty.

5. The vast majority of parents do their best.

6. There is little that a court can usefully do in this kind of matter.

7. The procedure is either unnecessary or ineffectual, and the section should be excluded where the children are with the petitioner.

8. Improvements can only come about after changes are made in the substantive law.

9. Changes in the approved arrangements are bound to occur, but will do no harm.

10. The whole scheme is entirely misconceived.

APPENDIX B

The following suggestions were made by District Registrars in answer to the question 'On the basis that the number of welfare officers is unlikely to increase substantially in the next few years, what improvements in the system would you suggest?'

1. There should be a welfare officer's report in all cases.

2. There should be a welfare officer's report in fewer cases.

3. A large city (such as Manchester) needs a full-time divorce court welfare officer.

4. Welfare officers should be assisted by or should liaise with local authority children's officers.

5. The petitioner's solicitor should obtain information regarding children living with the respondent and thus obviate the need for a welfare officer's report in many cases.

6. If the solicitor acting for the petitioner considers the position regarding the children unsatisfactory he should be required to give warning of this when he applies for the Registrar's Certificate prior to setting the case down for hearing, so that a welfare officer's report can be ordered at once.

7. A skilled person should decide if the arrangements are in fact satisfactory, etc.

8. The registrar should hold the enquiry before the hearing of the petition.

9. A further certificate or affidavit as to the precise position at the time of application for decree absolute should be furnished by the petitioner.

10. A further report by the welfare officer is sometimes needed at decree absolute stage.

11. The court should be given power to order supervision when a custody order has <u>not</u> been made (i.e. s.37(1) of the Matrimonial Causes Act 1965 should be amended).

APPENDIX C

The following suggestions were made by Divorce Court Welfare Officers in response to the question 'Have you any general improvement to suggest in the principles or practice of Part III of the 1965 Act?'

1. The possibility of reconciliation should be considered at an early stage.

2. The petitioner's solicitor should inform the welfare officer where children are involved on filing the petition and the welfare officer should thereupon make an enquiry.

3. The attention of counsel and solicitors should be drawn to the Practice Note authorising a referral of a case by the Registrar to the welfare officer for investigation before the hearing [1959] 3 All E.R. 780.

4. The welfare officer should be consulted about the need for an enquiry in each case.

5. Enquiries should be ordered on a broader basis.

6. An enquiry should always be ordered if the child is a voluntary patient in a mental hospital.

7. The welfare officer should sit in court when each case is being considered.

8. The court should have power to summon both parents to attend.

9. All affidavits in the case should be sent to the welfare officer automatically if he is making an enquiry.

10. A welfare officer's report should be confidential to the court and the solicitors, and copies should not be shown to the parties.

11. The court should be obliged to consider whether a supervision order is desirable.

12. More supervision orders should be made.

13. It should be possible to make a supervision order even though a custody order has <u>not</u> been made.

14. A supervision order should be made for a fixed period (e.g. 3 years for a child over 10, and 5 years for a child under 10) but the period should be capable of extension by the court.

15. The doubt concerning the upper age limit for making a supervision order should be resolved.

16. A simpler procedure is needed for the revocation or amendment of a supervision order.

17. A clearer procedure is needed for the exercise of the court's powers under s. 37(5) (variation of custody etc. order of child under supervision) and s. 37(6) (court's power to vary or discharge any provision made under s. 37).

18. The welfare officer should himself have power to initiate further proceedings in a supervision case where an alteration of the order seems desirable or there is a crisis.

19. The Juvenile Court should be given jurisdiction to vary supervision orders.

20. The welfare officer should be obliged to make an annual report on all supervision cases.

21. Copies of all Practice Notes concerning custody, access or welfare should be circulated to all welfare officers.

22. Much fuller use should be made by courts of their existing powers.

23. If access arrangements are working unsatisfactorily the welfare officer should be entitled to report this to the judge.

24. The court should be placed under a responsibility for the protection of the child.

25. The probation officer who actually handles the divorce court welfare work should be appointed the Divorce Court Welfare Officer.

26. If the work increases more specialisation will be needed, and this is desirable.

27. The post of Divorce Court Welfare Officer should be upgraded.

28. If the work increases Senior Welfare Officers should be appointed in the provinces.

29. In order to integrate the work of Divorce Courts and the Probation Service judges should become ex officio members of Probation Committees.

30. There ought to be less divergence in the way cases are handled; at present judges vary tremendously in their desire for

information and the use they make of it"; and the practice of District Registries varies enormously.

31. There ought to be a 'feed back' of results to judges and registrars so that they can learn how successful their decisions are.

APPENDIX D

The following suggestions relating to section 33 were made by local authorities in answer to the question 'Have you any general improvements to suggest in the principles or practice of Part III of the 1965 Act?'

1. Divorce cases concerning dependant children should be notified to local authorities in a similar way to adoption applications and a guardian ad litem appointed.

2. The local authority should be empowered to make an enquiry and report in all cases which it considers appropriate.

3. The local authority children's department is in a better position to appreciate the interests of the child than the probation service.

4. The authority should always be asked if the family are known to them.

5. The parents would benefit from advice and assistance from the children's department.

6. A follow-up is always desirable.

7. A more flexible procedure is needed for obtaining a variation of a supervision order.