13 Concluding discussion

We began this book by describing the way non-resident fathers had become vilified as feckless 'Deadbeat Dads' in some media and political discourse. Clearly there are some non-resident fathers who through anger, hurt or general vindictiveness are failing to support their children financially and in other ways, although they can afford to. But a much more pervasive picture that emerges from this research is that of men struggling to be the fathers of non-resident children.

What these men had to do was to surmount a number of internal and external problems when they became non-resident fathers. They had to deal with the practical difficulties of life – they had to provide money for their own household and their family; they had to provide adequate housing so that children had a place to visit; they had to have the time to spend with their children; and they needed energy and patience to be active parents. They also had to deal with the sense of loss over daily interactions with their children and had to adjust to parenting full-time on a part-time basis, if they mainly saw their children at weekends. Similarly, tensions could exist where the mother and father expected different codes of conduct and behaviour from their children in their respective households. These factors could have an impact on the fathers' relationships with their children.

In the first qualitative study we found that children and grandmothers (particularly the fathers' parents) were major actors in maintaining contact. The children of non-resident fathers have generally not been seen as significant actors who negotiate contact time with their fathers either directly or through their mothers. Some children in this sample were prepared to travel long distances on their own to see their fathers and some negotiated a change of residency across their parents' households. The age of children was important, not necessarily in terms of the continuity of contact (we had no evidence to explore this), but the nature of contact where it was already established. Some fathers found

that as their children got older they were 'growing away from home' and following their own interests; others felt they had got closer to their children and saw them more frequently and on an individual basis. These variable outcomes might explain the results in the quantitative survey – that the older the age of the younger child, the greater the likelihood that fathers would *not* have regular contact. The fathers in the first qualitative study reported that their young teenage children were busy with employment, friends and other interests and that they (the fathers) had to learn to accept that they were taking second place. This of course may be just as much a feature of resident fatherhood as non-resident fatherhood. Importantly, these findings highlight the limitations in measuring non-resident fathers' relationships with children as if they were a single unit who had uniform contact arrangements. Grandmothers could also be intimately involved in maintaining contact with children, not only for their own relationships as grandparents but also acting as guardians for the fathers' relationships. More research is needed to find out not only how much support is offered by grandmothers, but also how this works in practice and under what circumstances.

There remains a debate about the importance of contact between non-resident fathers and their children. In contrast to the findings of Simpson *et al.* (1995), whose data were collected in 1991, we found that fathers were very keen to maintain contact with their children after relationship breakdown. It has previously been common to assume that it was in the best interests of all those involved to make a 'clean break', and for fathers to give up contact, especially where there was conflict with mothers. It was the received wisdom that by not seeing their children, the fathers made life easier for all concerned, and that by maintaining contact, the misery and heartache that occurred after the relationship breakdown continued indefinitely (Goldstein, Freud and Solnit, 1973). Research in the USA by Wallerstein and Kelly (1980) and in Britain by Richards and Dyson (1982) has since led to a revision of this view. It is now thought that it is better for children, if not for their parents, for the fathers to maintain contact, not only for the child's emotional health but also for its social and cognitive development (that is, where abuse is not a feature of the father–child relationship). The terms of the Children Act 1989 reflect this view that the sharing of parental responsibility should be encouraged – under this Act the old notion of 'care and control' or custody being awarded to one parent has been swept away. Rather it is hoped that parents will seek to make their own arrangements, with the law stepping in as a last resort to arrange the residency of children and contact. Nonetheless, the barriers presented by travelling large distances and long gaps in contact, find

some men questioning whether the effort was 'worth it'. At the same time, however, though some fathers were resigned to loss of contact, others remain very bitter and angry and felt they had been let down by the legal system, which would not act to enforce contact effectively. As Walker (1996) has pointed out, it is difficult for any external authority to ensure contact, or at least not without risk of damage to all involved. Yet Smart and Neale (1997) argue that there has been a 'strong presumption' in favour of contact and that now judicial treatment has adopted a 'rigid and dogmatic' form which is harmful. Mothers are now viewed as being 'implacably hostile' when reluctant to allow contact, whereas before it was believed they were acting in the best interests of the children and in any case it was felt to be unrealistic to enforce it as it would necessitate separating out the interests of the child from the circumstances of the parent with daily primary care. Increasingly, argue Neale and Smart (1997), the legal profession is using coercive techniques including the threat of imprisonment – even in the face of evidence in some cases where the children were visibly distressed during supervised contact visits with their fathers – and where the previous behaviour of fathers, towards mothers at least, has been known to be violent. Under this egalitarian ethos Neale and Smart question 'whether it will soon be possible to be critical of any kind of fathering'.

What this serves to highlight is the interwoven nature of the needs and interests of mothers, children and non-resident fathers. Giving primacy to the needs of either of the parents can result in losing the best interests of children – a fine balance needs to be struck; yet the needs and interests of these three major parties may constantly shift, requiring a responsive and refined approach in the exercise of the law. We certainly do not advocate that all fathers should have contact with their children, but there must come a point where men's complaints about their lost relationships with their children must be taken seriously. Legal enforcement is not the answer, and in any event it comes too late after relationships between the parents have completely broken down. Mediation seems the most hopeful way forward, though it has been argued that this approach can also coerce mothers to comply with contact.

As we have seen, contact with the child is very closely associated with whether child support is paid. The Child Support Act 1991 was based on the principle that biological fathers have an absolute and unreserved responsibility to provide financial support for their children throughout their lives. Not all the fathers accepted this principle. The maintenance obligation is one that was negotiated. Fathers arrived at a commitment to pay maintenance by weighing up the strength of the financial obligation in the context of their own personal, financial and

family circumstances and those of the mother and children. In practice, the obligation to pay was never unconditional, it always depended on circumstances. It partly depended on the father's ability to pay, the children's material need for maintenance and the mother's and her partner's (if she had a partner) ability to provide financially. But most importantly it was the history of the relationship with the mother that was the overriding factor in making a commitment to pay maintenance. From the fathers' perspective it was mothers who were claiming maintenance (albeit on behalf of children), not the children. This claim had to be *legitimised* before fathers would pay. Primarily, the mother's right to claim maintenance on behalf of children was accepted if she at least recognised, if not actively supported, the father's independent relationship with his child(ren). If the mothers failed to accept the father–child relationship or failed to sustain it through granting contact, then the fathers found this extremely difficult to comprehend. This incomprehension induced an overwhelming sense of victimisation and powerlessness among those men who wanted a relationship with their children but were unable to achieve it in the face of what they saw as selfish and callous mothers. The resultant attitude tended to be that there was no point in paying maintenance because the children would not know their fathers were supporting them, there was no guarantee that the money would be spent for the children's benefit and the fathers were 'paying for a child they were not seeing'. Thus not only would fathers get 'nothing back' in return for maintenance (contact with their children), but payment was meaningless because the fathers' act of giving was rendered invisible to the children themselves. Children would be unaware of the symbolic expression of love and care embedded within the act of giving maintenance money, particularly when, in the absence of contact, there was no other means through which fathers could demonstrate their affections to children directly. Therefore the obligation to pay maintenance was intimately linked with contact through the relationship with the mother, and the different outcomes of the process of negotiation (payment or non-payment) primarily hinged upon this relationship.

As we have seen, financial obligations are not straightforward; non-resident fathers are one step removed from their children and consequently it appears that money takes on greater significance in these relationships. Whether we like it or not, men seem to use money to at least ease relationships with mothers, if not to persuade mothers to agree to contact. Maintenance money is also earmarked for specific purposes and endowed with particular meanings. The maintenance obligation therefore is not just a bill to be paid, but is given on the basis of the nature of the relationships that underpin it. Thus we have different

expressions of the obligation – gift maintenance, entitled maintenance and compensatory maintenance. For some, maintenance was enforced and enforced maintenance carried no endowed meaning other than through its withdrawal, which could send messages to the mother of the father's disquiet and anger.

Child support, not contact, has been the most salient and controversial policy arena concerning non-resident fathers in recent years and the approach to child support obligations has been transformed in a very short period. Under the French Code Napoleon of 1804, 'The search for paternity is forbidden' (section 340). In British case law and in practice if not in statute, by the end of the 1980s the rights of non-resident fathers to have control over and access to their children had become dissipated. Their obligations to maintain their former partner and children had effectively lapsed as well. The approach to financial responsibility for children tended to be based on the household formation – or social relationships – whether they were biological or not. Thus stepfathers took on the financial responsibility for children in their care when they were recognised as a 'child of the family'. In practice, social fathering rather than biological fathering had become the accepted basis on which a child–father relationship existed and financial obligations were determined. As Maclean (1993) notes, in the private law in the United Kingdom the apportionment of financial responsibility between social parenthood and biological parenthood tended to be pragmatic and based on the needs and resources of all involved rather than upon any firm rule.

However, at the end of the 1980s a combination of factors led to a remarkable reassertion of the obligations of biological fathers and separated partners to each other. It arose in the legal context of burgeoning recognition of children's rights as capable individuals – which began with the Matrimonial and Family Proceedings Act 1984 where courts were instructed to give primacy to the interests of children when settling divorce. It partly arose in the political context of 'moral panic' associated with the Victorian values/'back to basics' anxieties of the Conservative Governments of Margaret Thatcher and John Major. The practice of the legal profession to make low child maintenance awards to protect lone parents' full entitlement to social assistance (Eekelaar, 1991), and the failure of the DSS liable relative sections to actively pursue maintenance from parents, were said to be deeply embarrassing to the Conservative Government under Margaret Thatcher, which was committed to encouraging individual responsibility and reducing the welfare role of the state (Maclean, 1994). It was also partly generated by anxiety about the rising level of public expenditure associated with the increase in lone parents and their increased dependency on social assistance

and public housing. It was certainly reinforced by anxieties about the impact of family breakdown on the living standards of lone parent families and the impact of this poverty, and the disruption and the experience of living in a lone parent household, on the well-being and future development of children (Rodgers and Prior, 1998).

Though not all the legislation affecting family law in recent years has been influenced by all these factors, one or more of the factors have been influential in determining the nature of the Children Act 1989, which affirmed that in care proceedings following separation and divorce the best interest of the child should be 'paramount'; the Child Support Act 1991 established an absolute obligation of non-resident fathers to provide financial support for their biological children throughout their lives; the Family Law Act 1996, as well as seeking to remove the vestiges of fault in divorce proceedings, will establish a 'framework' for information giving and mediation in marital breakdown. There is more legislation expected including an Act to cover pension splitting on divorce, legislation to establish the rights of unmarried fathers and a major reform of the child support system.

We have discussed the problems with the present child support scheme in the introduction to Chapter 8. At the time of writing, the Government are consulting on a Green Paper (UK, Cmnd 3992, 1998) that will substantially reform the existing scheme.

It was a grave error to seek to establish a child support regime based on a rigid (and yet complicated) formula administered by the DSS. This area of policy calls for a degree of flexible, individualised justice that probably cannot be handled within the disciplines and culture of social security. When the CSA was being planned, it might have been wiser and more effective to have reformed the existing court arrangements to increase consistency of adjudication, and to establish mechanisms for better review and enforcement.

What we have now is a split system for child support – the DSS dealing almost exclusively with benefit cases, while non-benefit cases make private arrangements between the parents themselves or with the support of solicitors. At the same time the Lord Chancellor's Department under the Family Law Act 1996 is experimenting with an information service and a mediation service following marital breakdown (but not cohabitation breakdown) covering the arrangements for children, the distribution of property and other assets – in fact everything except child support. The Family Law Act has not yet been implemented and the decision to reform child support could have presented an opportunity for thrashing out a common strategy and more coherent set of arrangements for negotiating contact, child support and other matters

consequent on the breakdown of relationships when children are involved. The difficulty is that we are not starting from scratch – the Child Support Agency exists; the Family Law Act exists, after a torrid passage through Parliament. The Lord Chancellor does not want to go back to the drawing board and certainly is reluctant to take on the poisoned chalice of child support, so we are left after the reforms with a set of incoherent arrangements. This is despite the vague promises in the new child support proposals of having an 'active family policy'.

Though the proposed reforms have many laudable improvements, including a disregard in Income Support, the weakness of the proposed new scheme for child support is that the assessments are still formula-driven and still imposed and enforced completely independently of negotiations between the parents about other arrangements for financial support, contact and other related matters. The results of this research show that no child support scheme has a prospect of success unless it is based on negotiation between the parents, which is recognised as fair, and the perception of fairness on the fathers' part depends more than anything on their ability (and the former partners' willingness) to have shared parental responsibility for their children. The mistake that the Child Support Act made was that the state took a robust moral stance in the interests of the taxpayer and imposed a law on people who, it has been demonstrated, were not prepared to consent to it. What is needed is a service that enables these fathers and mothers to work out arrangements for child support, contact and other matters that concern them. Of course the state and taxpayers have an interest and that interest can be represented by a framework of guidelines, even a formula, but only if it is able to take account of exceptional cases and individual circumstances in a reasonably flexible manner. It is possible that the tribunal system proposed in the Green Paper could become the vehicle for providing such a degree of flexibility if it is allowed to operate fairly and freely and is not circumscribed by statute. However, it ought to be possible for the adjudication elements to be returned to a reformed family court system with the collection and enforcement remaining the responsibility of a successor to the Child Support Agency.

From time to time the Green Paper recognises the need for children to have clear signals that their father cares for them and is paying maintenance (see for example Chapter 18, para 3). We have found that this is a critical issue. At the moment, in the majority of cases the father is paying informal support and that is recognised by the child because for the most part it is given directly to the child. If the formal child support regime is going to become more effective, then informal support is likely to diminish. Children are going to think that their fathers'

contribution (and care) for them is less and this is going to affect their relationships with their fathers. The issue of the salience and transparency of child support is a major grievance of fathers, an important reason for not paying and a cause of non-compliance. Fathers (resident and non-resident) very commonly define their role and express their affection and commitment through the breadwinner role. When they are non-resident and do not have contact, they do not see any recognition of their financial contribution and do not pay or pay informally. It would be in everyone's best interest for there to be a formal arrangement for informing children (over a certain age) that their fathers are contributing to their upkeep.

There is a proposal in the Green Paper to charge all fathers, regardless of their incomes and family commitments, a minimum child support of £5 per week. At present, fathers with new children to support and who are on Income Support or have a low income are excused paying any child support. The justification for this proposal is that personal circumstances cannot negate responsibility for one's children. But this 'principle' competes with the principle that Income Support is supposed to be a floor, a safety net. Although that principle has already been breached by direct deductions for utility debts and Social Fund loans, it is a further unfortunate undermining of the safety net. It is also effectively a transfer from one poor family to another possibly poor family. Indeed, what it does for lone mothers on Income Support is just about compensate them for the abolition of the lone parent premium in Income Support – by cutting the Income Support of their former partners. There is a balance to be struck between parents and the taxpayer. The taxpayer takes primary responsibility for supporting the children of those parents who are not in the labour market, and has, and will continue to have, responsibility for supporting the children of lone mothers on Income Support. This has been the collective arrangement considered reasonable since 1948. It is an understandable aspiration to get fathers to contribute what they can, where they can, but not where they cannot and there is a risk that other children will suffer.

Connected to this is the fact that there is no limit to the maximum maintenance that non-resident fathers will be expected to pay. Judging from our results, there will be serious opposition from better-off fathers if the scheme expects them to pay more than the costs of a child and anything more than necessary to lift their children beyond the scope of the benefits system. Why should the state determine how much fathers should pay for their non-resident child when it does not involve the taxpayer? It would be considered an intolerable assault on personal liberty if it happened in a couple family.

This is perhaps an example of the hint of residual moral vilification of non-resident fathers that still emerges from time to time in the Green Paper. In general, the language of the Green Paper is a great improvement on that of 'Children Come First'. For example, the Green Paper follows our usage of non-resident fathers instead of absent fathers. However, in Chapter One, para. 1 we are told that child support will be 'firmly enforced' – *effectively* enforced might have been received better by citizens experiencing government intervention in the complexities and intimacies of their private lives. Later in Chapter Two paras 25 and 26 there is the assumption that all fathers leave their children. Again we hear the echoes of the 'walking away' language of Mrs Thatcher, which so disastrously inspired the Child Support Acts. Our research shows that some fathers are never given a chance to live with their children. In other cases mothers take their children and leave the father. Generally, separation occurs after much unhappiness. In the end, parents leave each other by mutual agreement. Many fathers are sad and frustrated at not being able to see their children as much or as often as they would like. Their lives, like their children's and former partner's, have been disrupted. They are much more likely to be out of employment and dependent on a low income. Nevertheless, the majority are in touch with their children and the majority are paying either formal or informal support. If policy is to be successful in helping parents, both parents, to care for their children, it needs to build on these positive elements in these human relationships.

According to Smart (1997) there has been, in the debates about the decline and destabilisation of the family, a wishful thinking where it is hoped to return 'the family' to some idealised state unaffected by social change. However, what appears not to have changed is that fathers are still keen to point out that they do care about their non-resident children – and that is the problem! Rather convolutedly, it is because they care about maintaining their role as fathers and because they continue to want a close, intimate and fulfilling relationship with their children, that they can become reluctant to pay maintenance. The majority want to fulfil all their parental obligations, social, emotional and financial, but it seems that one is unsatisfactory without the others. There is therefore in some sense no need to 'reinforce' parental obligations – they exist and are accepted already. But there is a need to facilitate them through an increased understanding of the emotional and moral turmoil that follows in the wake of family separation or in the wake of cohabitation breakdown or non-marital births.