



## **FAMILIES NEED FATHERS**



### **Family Justice Review Interim Report: Questions for Consultation**

#### **Response by Families Need Fathers (FNF), supported by The Custody Minefield**

While pleased to see debate concerning the reform of the family justice system, we believe the proposals in the first interim report do not address the problems which face separating parents.

Research suggests that nearly a third of children whose parents separated at least three years previously have no contact with the parent they do not reside with<sup>1</sup>. According to the Grandparents' Association, one million grandchildren have lost contact with a grandparent. The current system does not work for a significant number of children, whose relationships are impaired if not entirely severed.

While generally accepting the interim proposals and their focus on a more streamlined and timely service, we would comment that if the reforms do not address the fundamental failures of the existing system as a whole, society is poorly served.

Within our own response, detailed within this document, we set out considered and detailed proposals in keeping with the UK's commitment to the UN Convention on the Rights of the Child, and respectful of child welfare related research findings.

#### **1. Do you agree with the proposed role that the Family Justice Service should perform?**

Generally speaking, we are in broad agreement with the proposed role of the Family Justice Service. We appreciate the move to simplify the existing system, as the current overlap in roles between the courts and support services serves only to confuse those involved, increase delays, and ultimately, hinder the services provided for children and families.

We believe that the interim report lacked clarity regarding how the different branches of the new Family Justice Service would be coordinated and directed toward promoting cooperative, out-of-court resolutions of parenting arrangements. For example:

- Who will provide the support services (such as parenting information programmes)?
- Who will fund them?

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<sup>1</sup> <http://www.education.gov.uk/publications/eOrderingDownload/Parentreport.pdf>

- Will the services be affordable (whether for the parents of state)?

This point is particularly salient with the Family Procedure Rules having come into effect on 6<sup>th</sup> April 2011, with attendance at a Mediation Information and Assessment Evening being made compulsory for anyone wishing to apply to court for an order relating to their children or their finances during divorce.

We wholeheartedly back their being support services for separating parents, but these must be accessible, both in terms of cost and availability. Without this, the Family Justice Review panel's proposals will fail and the courts will remain overburdened.

In respect of mediation, there need to be sufficient numbers of adequately trained mediators. Whether parents access mediation support from the private or third sector, there will need to be sufficient funding and resourcing. We trust that the Family Justice Review will support the new procedure rules which require that a mediation meeting must be organised within 15 days to prevent delay. It must be noted that delay can often lead to a less than ideal 'status quo' arrangement becoming established, which might otherwise have been avoided if the dispute resolution process was more timely.

Another role of the Family Justice Service we are concerned about is the provision of court social work services, particularly the future of Cafcass. As the Interim Report correctly identifies, Cafcass fails to provide adequate service to either families or the courts, creating unnecessary delays within the family justice system. Its priorities and accountability are conflicted, as are its relationships to families, the courts, and local social services. As an organisation, Cafcass has become involved in far too many cases, creating delays and backlogs where there ought not to be.

Subsuming Cafcass into the Family Justice Service without further reform will not solve these problems. It was not clear from the Interim Report how Cafcass would fit in to the Family Justice Service, or how it would be aligned with other services. We await further details on this matter, and as the performance of Cafcass is a frequent source of anxiety for our members, we believe that this should be an urgent priority for the review panel before the final report is released. We believe that Cafcass should only be involved where serious cases of violence or abuse have been identified or alleged. This would ensure that the resources of Cafcass are targeted to where they are most needed, whilst cutting the unnecessary bureaucracy for the majority of private family law cases.

**2. Ensuring that a child's voice, wishes and feelings are central to the Family Justice Service is crucial. What would you recommend as the crucial safeguards to enable this to happen?**

See question 3.

**3. Do you agree that children should be offered a choice as to how their voice can be heard in cases that involve them, including speaking directly to the court?**

We welcome the Interim Report's desire to place the child's interests and welfare at the forefront of the family justice system. We agree processes to allow a child's wishes and feelings to be heard by a judge, whether in person or in writing, in court or outside, or through a trusted and neutral intermediary, would help to ensure that children's wishes are given due consideration.

There are however further issues which need to be considered to ensure that a child's voice is heard, and that their wellbeing is protected from beginning to end. Children must be made aware of their options, ideally before court proceedings begin. Crucially though, it must be made clear to them that this is simply an option, and that they are under no obligation to address the court or judge in any way. This information should be provided directly to the child or young person in question wherever possible, and not simply relayed by a parent.

We must be mindful that if children are informed of their options only via a parent (or other subjective party), they could be placed in a position where they feel they must protect the interests or feelings of that person. Attention must always be paid to the burden that children may find themselves placed under, particularly in the often emotionally volatile environment of the court room.

We believe that professionals engaged in recording the children's wishes and feelings should undergo training to help them identify cases where a parent has coached or manipulated a child to express opinions in a particular adult's favour.

With regard to the hearing of children's wishes and feelings, we agree that there is a presumption that the child's opinions should be heard. However, this needs to be considered on a case by case basis, taking into account their individual emotional needs and level of maturity and understanding. Clear guidelines by which these decisions are taken will have to be made publicly available, and the reasoning behind such decisions must be made available to all parties involved in the case. Public confidence in the system as a whole would be undermined if this were not so.

We believe that a child's voice should be heard, and his or her wishes considered. The courts have recognised though that cases do occur where a child is unduly and unreasonably influenced by one or other parent, and an over-reliance upon their wishes may go counter to their welfare. A snapshot in time should not define their long term relationships unless significant welfare concerns are identified.

**4. Do you agree there should be a single family court?**

We agree that the establishment of a single family court in line with that outlined by the Finer Report would benefit both families and the family justice system. A single entry point for court users, with greater consistency

in case allocation, would be easier for those entering the system to understand.

The current opacity of the family justice system is a key concern for parents we work with, and this will go some way to making the system more readily understandable. By bringing the different court jurisdictions together in this manner, it is hoped that cases would be processed on a far more efficient basis than the current model.

We believe that delays serve only to entrench conflicts to the detriment of children's and parents' wellbeing, and can often lead to the continuation of unsuitable interim arrangements before cases are resolved. A single Family Court should also deliver economies of scale resulting in efficiency gains.

**5. Do you agree that the changes we have proposed to the judiciary – including greater continuity, specialisation and management – will lead to improvements in the operation of the family justice system?**

We support the proposed changes to the judiciary in the areas of continuity, specialisation and management, and hope that it will improve both experiences and outcomes for families within the family justice system. As correctly identified in the report, the present lack of judicial continuity in family law cases hinders progress, making a difficult process needlessly more fragile. We know of cases where seven judges have been involved in a single set of proceedings, creating unnecessary confusion and delay. We believe, a judge who is fully aware of the development of a case from beginning to end is best placed to ensure the best outcomes for a child are reached.

We believe that judicial specialisation can only benefit families. We have seen delays happen in the country court due to court time becoming overburdened with debt related cases. Similarly, common sense dictates that a specialist judiciary will have more targeted and child welfare related training. We also believe that the management of criminal cases requires a different approach assisting parents to reach resolution.

**6. Do you agree that case management principles, in respect of the conduct of both private and public law proceedings, should be introduced in legislation?**

Families Need Fathers is primarily concerned with private law matters, and we believe that the introduction of case management principles in legislation could be useful in this regard. The duties on courts concerning case management, outlined in the Family Procedure Rules 2010, are positive. The definition of 'active case management', including a focus upon encouraging parties to cooperate and where possible resolve issues without a formal ruling being required and concentrating upon specific issues, is one we support. We believe that this could improve the culture around dispute resolution by focusing parties upon the best interests of the child, rather

than allowing unfocused court hearings to become an arena in which grievances between parties take centre stage.

The statement of these principles in law would no doubt strengthen these aims. However, they would have to be implemented effectively to have any tangible benefit. This would require judges to use their current powers to penalise those who are unreasonably uncooperative, who make false allegations, or who are vexatious litigants. Were the case management principles to be introduced in legislation, it would therefore be necessary to clearly outline both the expectations for all parties, and clear guidelines on what action the court may take where these requirements are not adhered to.

## **7. What changes are needed to the culture and skills of people working in family justice and how best can they be achieved?**

There are two key changes to the skills and culture of those working in family justice which would enable better outcomes to be reached for children and families; the support for out of court settlements over litigation, and the promotion of shared parenting as being in a child's best interests (which research clearly supports).

Where there are issues which concern a risk of significant harm, the state clearly has a duty to intervene. Otherwise, it should be recognised that within today's society, shared care is the normative arrangement in intact families. Research in 2007 by the Equal Opportunities Commission found that the amount of time that mothers and fathers spend on childcare differs by only 16 minutes a day<sup>2</sup>. The culture of primary carer and contact parent is not representative of the modern realities of family life.

We accept the suggestion that there should be a presumption of 'shared parental responsibility' but in practice, this already exists. The difficulty is that by relegating one parent to a secondary-carer status as commonly happens in court, institutions such as schools and medical practices often refuse to acknowledge a parent's legal status.

We believe that the courts too often fail to make use of powers introduced by Parliament to safeguard a child's relationships, and where a case is 'difficult' choose the path of least resistance rather than one which is more beneficial to the child.

Sadly, mediation requires both parents to be capable of compromise, and sometimes an impartial third party is necessary to adjudicate on a matter. We would like to see courts being less adversarial, and the judiciary being more inquisitorial in carrying out their function.

There must also be a little wisdom regarding mediation, in that if there is no incentive to reach and maintain a reasonable settlement, why should a parent compromise? With so much uncertainty as to outcome, and some parents being bitter, unhappy and at times vengeful, clearer expectations and outcomes from the outset are in reality most likely to reduce

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<sup>2</sup> Equal Opportunities Commission (2007) *Completing the Revolution: The Leading Indications*, London: Equal Opportunities Commission

applications to court. This a further reason why we support there being a presumption of shared parenting in law. By this, we do not mean an automatic 50/50 division of time between two parents' households, but both parents having a significant and meaningful involvement in their child's upbringing (see our answer to question 17). As with any presumption in law, in individual cases rebuttal is possible (and necessary) if a presumed outcome is shown not to be in a child's best interests (e.g. where there is a risk of significant harm).

Furthermore, judicial approaches to the proposed statement in law reinforcing the importance of a child continuing to have a meaningful relationship with both parents will depend very much upon the wider culture of the Family Justice Service.

Without clear principles in law, we see ad hoc approaches being taken by individual judges, adding to the uncertainty that families often feel when entering the family justice system. Justice cannot be served if interpretation of the importance of shared parenting fluctuates widely. Therefore, it will be necessary for all judges to be familiar with the developmental and social benefits for children of maintaining a meaningful relationship with both parents following separation or divorce, and to pursue this in a more uniform manner than currently experienced.

It is arguable that the uncertainty in the courts, caused by the existing wide ambit of judicial discretion, does and will encourage some parents to chance an outcome in court in preference of committing to dispute resolution. A presumption of shared parenting, we believe, is essential to reduce the number of bitter, contested, and lengthy court proceedings, to reflect the modern reality of parenting, and to best secure child welfare.

**8. Do you have any other comments you wish to make on our proposals to refocus the role of the court?**

It must be reiterated that to build confidence in the Family Justice Service, Cafcass must be reformed rather than simply subsumed. As highlighted previously in this response, the poor performance of Cafcass is a major source of frustration for our members, and central to the delays which cause so much anguish for children and families. Cafcass requires a new, focussed mission statement which can resolve its existing tensions regarding purpose and accountability, whilst preventing overlap with local social work services. Cafcass should be involved only in cases where abuse or violence have been identified or alleged. This would ensure that their support is targeted to those most in need, and that their purpose is clear to all parties involved.

**Private Law**

**17. Do you agree there is a need for legislation to more formally recognise the importance of children having a meaningful relationship with both parents, post-separation?**

We believe there is an urgent requirement for legislation formally recognising the importance of children having a meaningful relationship with both parents, and that the proposals recommended by the report do not go far enough. Decades of academic research have repeatedly found that children who enjoy the full involvement of both parents in their lives, whether as a single unit or following separation, are likely to benefit from more positive social outcomes (including stronger academic performance, a lower propensity to substance abuse and enhanced social wellbeing) in the short, medium and long term.

Such benefits for individuals, communities and wider society cannot be overlooked, and should be supported by the government wherever possible. This means that legislation formally recognising the importance of children maintaining a meaningful relationship with both parents post-separation is the very least that should be done to support this.

A mere statement of importance in legislation is unlikely to result in more children maintaining meaningful relationships with both parents though. If, as opponents of a presumption of shared parenting sometimes claim, the judiciary already operates from such a position, it is difficult to see what utility such a statement would have. Through our membership's many years experience of the family justice system, it is clear that this supposed commitment is rarely reflected in the rulings of the courts. Fortnightly visits are simply inadequate to enable a 'meaningful' relationship to develop, as it inevitably precludes a child from being able to experience the holistic care of the parent they do not regularly live with.

The old cliché of the 'weekend dad' is salient here, as it reflects a broader truth that 'quality time', where emotional bonds are strengthened and nurtured, by their very nature require a reasonable quantity of time to develop. This cannot happen if 'routine time' is spent with one parent, and the 'leisure time' of the weekend with the other parent. To enjoy the full benefits of a meaningful relationship with both parents children must be able to experience the lives of their parents 'in the round', with both parents fully involved in all aspects of the children's lives, whether it be schooling, health, leisure, or simply day to day care.

Families Need Fathers believes that the recognition of the importance of both parents will only benefit families and communities if it is reflected in the parenting arrangements which are made for children, and that this will only be possible with a presumption of shared parenting in law for the majority of cases where there are no welfare concerns for involved parties. **As such, we believe that the dismissal of this in the panel's interim report is misguided.** Particularly disappointing is that the consideration of a presumption of shared parenting, and the evidence presented against it in Annex P, is undoubtedly the weakest section of an otherwise thoughtful and well considered report. Firstly, shared parenting is presented in a very crude form, both as a supposed 'fathers' rights issue' and as a demand for equal division of a child's time between parents. Neither of these portrayals is accurate. Shared parenting is not a question of 'father's rights'; it is about ensuring that children are able to maintain a meaningful relationship with both parents following separation and divorce and as such reap the psychological, developmental and social benefits of this, as outlined previously. The implication that shared parenting is only a concern for

fathers, and therefore only for men, is false. Shared parenting is about providing the arrangements from which children will best be able to benefit from the involvement of both parents in their lives wherever possible; the gender of the parent who does not currently live with their child on a day to day basis is irrelevant.

The presentation of shared parenting with an emphasis on equal division of time is also a false representation of the issue. You would be hard pressed to find any serious advocate of shared parenting who believes that the courts should act as 'King Solomon', blindly dividing a child's time down the middle without regard for their individual circumstances. The principle of a presumption of shared parenting is not primarily one of joint custody. We envisage that a presumption of shared parenting in law would be to support the following principles:

- 1) That children feel they have two fully involved parents in their lives;
- 2) That one parent is not able to dominate the lives of the children at the expense of the other or to control the other parent via the children;
- 3) That the parents have broadly equal 'moral authority' in the eyes of the children and that the children have free access to both their parents if there are issues affecting them;
- 4) That the children are able to share the lives of both their parents 'in the round' – for example not spending all 'routine time' with one parent and only 'leisure time' with the other;
- 5) That the parents are in a position of legal and moral equality, and are considered in this light by the children as well as friends, neighbours, teachers and so on, as well as public authorities. This would apply to routine, as well as major issues in a child's life;
- 6) That there is no part of the children's lives, for example their school life or having friends, that one parent is excluded from by virtue of the allocation of parenting time or the law on separation/divorce and children;
- 7) That the children are not by virtue of the allocation of parenting time excluded from any part of either parent's life;
- 8) That the children spend enough time with both parents to be able to negate any attempts by one parent to turn or manipulate the child against the other;
- 9) That the children do not develop stereotyped ideas from their parents about the roles of the sexes, for example that a father's role is chiefly financial and a 'giver of treats', and that mothers have responsibility for everything else.

It is these principles, dedicated to securing the best interests of the child, which a presumption of shared parenting would support. It is important to remember though that a presumption is just, that; it does not suggest that



this must be the case for every family. Clearly, in families where, for instance, there is a long history of abuse, such an outcome would not be suitable. For the majority of cases though, a presumption of shared parenting as outlined above would be a more appropriate way to recognise the importance of both parents in a child's life.

**18. Do you agree with the proposals to remove the terms 'contact' and 'residence' and to promote the use of Parenting Agreements?**

The removal of the terms 'contact' and 'residence' from private family law cases is a welcome move, and is long overdue. Language is not a neutral tool; it reflects the history and values of the system it is used in, and as such, means a great deal to those involved. 'Contact' and 'residence' are long outdated terms that undermine the family justice system.

They imply a 'winner takes all' approach to parenting arrangements, where the winner takes 'residence' and with it the role as 'primary' parent, whilst the loser must settle with 'contact'. This suggests that the parent is merely a visitor in the child's day to day life, a spectator or playmate rather than a fully involved parent.

The removal of these terms will mean that fortnightly visits are no longer seen as the default resolution for parenting arrangements, which often precludes a parent's practical involvement in schooling, yet the Government's own research finds that paternal involvement in a child's education independently benefits academic achievement. Parenting Information Programmes and Dispute Resolution Services should publicise the child welfare benefits of shared parenting and assist the parents in agreeing arrangements which best meet their children's needs.

Leading on from this, we fully support the promotion of Parenting Agreements where there are no welfare concerns for the parties involved. Arrangements reached through cooperation rather than conflict are far more likely to put the child's interests first, whilst also ensuring the resources of the courts can be more effectively used in cases where they are necessary (such as those involving domestic violence, abuse or implacable hostility).

We believe that 'parenting time arrangements' is a more appropriate and neutral phrase than 'contact or residence'. Additionally, terms such as 'primary carer', 'provider' and 'care giver' should cease to be used by professionals in the legal system for the same reasons outlined above.

**19. Do you agree that there should be a requirement to consider Dispute Resolution Services prior to making an application to court?**

Yes. Too many parents currently feel that court is their only option, or is an unaffordable option. There has been a lack of adequate information and support to assist them in reaching amicable arrangements in their child's best interests.

Once these families enter the legal system, many find that their understandable hostility stemming from separation becomes entrenched in the emotionally volatile atmosphere of the litigation process, making the compromises which are necessary to reach suitable parenting arrangements far more difficult to bear for both parties. Meanwhile, the unacceptable arrangements for children during legal proceedings, which usually entails one parent living with the child with little or no access for the other parent, slowly becomes the status quo over time. This can have a severely detrimental impact on the relationship between the child and the parent they do not live with, which in some cases may never be fully repaired. Such outcomes are not in the best interests of children or their families, and out of court resolutions are highly desirable, wherever welfare concerns are not present.

However, a number of issues must be considered further if Dispute Resolution Services are to operate as a true alternative to the legal system, rather than simply an extension of the current family justice process. Firstly, parents will require support and information in order to effectively engage with Dispute Resolution Services. This support should be available to parents at the point of separation.

In our response to the recent CMEC consultation we recommended a charity community-based support consortium, to integrate support for child arrangements and maintenance post-separation and based within existing organisations within the public sector, such as English Sure Start centres or GP's surgeries. This approach would ensure that information is highly visible and readily available, and would enhance the potential for Dispute Resolution Services to be successful.

Leading on from this, the Government will have to demonstrate its commitment to placing Dispute Resolution Services at the heart of the family justice system through ensuring both these services and the third sector organisations which support them are adequately staffed and funded. For example, the well highlighted lack of adequately trained mediators in many parts of the country would risk making the requirement to consider Dispute Resolution Services a burdensome delay, rather than a viable method of organising parenting arrangements. It may be possible for funding to be increased through savings made in reducing the number of cases which go to court in private family law. It would not be desirable for the system to be introduced without adequate preparation in this regard.

It would be unacceptable for arrangements made in Dispute Resolution Services to simply be ignored, requiring parents to enter the process again and again without any progress being made. Parenting Agreements made through Dispute Resolution Services must be made legally binding, and any breaches treated with the appropriate seriousness by the courts if necessary.

## **20. Do you agree with the processes we outline for the resolution of private law disputes?**

In our original submission to the Family Justice Review, we proposed a new private family law path designed to place emotional support and out of court resolutions at the centre of the family justice system. We are very pleased to see that the processes outlined by the interim report closely match our proposals, including compulsory consideration of Dispute Resolution Services and Parenting Information Programmes where there are no welfare concerns for involved parties.

We would add that the panel should consider referrals for children to contact specialist listening services, such as Child and Adolescent Mental Health Services (CAHMS), or for their services to be more widely publicised through schools. An online survey carried out by *Kids in the Middle* in 2008 found that three-quarters of the children who responded wanted more support during their parents' separation in the form of someone to talk to about their feelings. As the central goal of private family law is to create the best outcomes for the child whilst minimising harm, such services should not be neglected in the processes following family breakdown.

It is worth reiterating that changes to the processes and organisational structure of the family justice system will be for nothing if they are not accompanied by a wider shift in the culture of both professionals and users of the service. This is where a presumption of shared parenting (as defined by the principles set out in our answer to Q.17) would be a far better solution than merely a statement of the importance of both parents.

## **21. Which urgent and important circumstances should enable an individual to be exempt from the process for Dispute Resolution Services?**

We support out of court resolutions because we believe that, in many cases, parents working together can produce solutions to parenting arrangements which result in better outcomes for children, whilst avoiding the financial and emotional costs of litigation. However, it is clear that in cases where there are concerns for the safety and wellbeing of either the children or parents, these cases must be handled by the legal system as soon as possible. Inevitably, there will also be cases where one or both parents' implacable hostility towards the other requires a third party to intervene, and makes court necessary.

Cases featuring domestic violence or abuse should be immediately fast-tracked to court for them to be handled appropriately. By making Dispute Resolution Services the default method of handling private law cases where there is no identified risk to children or parents, the family justice system will be in a stronger position in terms of time and resources to ensure that these exceptional cases are handled in a timely and thorough manner.

It should be noted though that false allegations of violence and abuse are sadly a feature of the current system. Fast-tracking of cases, combined with the tightening of the legal aid system, risks an increase in the number of people who may be affected by this. False allegations destroy lives, and can have devastating consequences for those accused, their children, and their wider family. Clearly, victims of domestic violence (of either sex) require the best support which the system can provide, and should never be discouraged from taking the appropriate legal steps. However, there are

currently few, if any, consequences for those whose allegations are proven to be false.

Domestic Violence is a criminal offence; it should therefore be heard as such, with the appropriate burden of proof and sanctions for those making false accusations. This would help to ensure that the system cannot be abused by those seeking to use allegations of this nature to avoid dispute resolution, to qualify for legal aid, or to punish their ex-partner and try to remove them from their children's lives. We are deeply concerned that there will be a marked increase in false allegations if legal aid becomes only available to those who allege domestic violence, and if there are no sanctions or punishments for those who falsely accuse.

**22. What do you think are the core skills required for mediators undertaking an assessment?**

As recognised by the report, it is necessary for mediators to meet the requirements of the Mediation Quality Mark Standard. All mediators must be qualified to the highest professional standards, to ensure that families receive the best support possible, and to inspire confidence in the service amongst the wider public. The seven key quality measures of the Mediation Quality Mark Standard provide a useful description of the skills required by mediators, and we therefore support the report's proposal for all mediators to be accredited to at least this level.

**23. Is there any merit in introducing penalties, through a fee charging regime, to reflect a person's behaviour in engaging with Dispute Resolution Services, including the court?**

Penalties for non-cooperation with Dispute Resolution Services, where there are no identified welfare concerns, may become a necessary component of the Family Justice Service. Without them, the process could become another barrier to be crossed on the road to litigation; meanwhile, children will continue to be denied the possibility of maintaining a relationship with both parents, and by the time a family has passed through all the stages of the private family law path and an order made by the court, irreparable damage may have been caused to the parent-child relationship.

A fee charging regime is certainly a punitive measure which could act as a deterrent to those unwilling to engage with Dispute Resolution Services. As we regularly see when contact orders are breached though, the courts are usually reticent to take action against the parent with whom the child resides. The judiciary would have to be far more proactive in this regard to ensure that deterrents act as such, and are not seen simply as empty threats.

Financial penalties do require careful consideration before they are implemented. We would not wish for fines to be imposed which would negatively affect the care that a child is able to receive from their parent. This would be a particular concern for low-income families, who would be more vulnerable to such actions. Therefore, we believe that fines should form just one part of a wider set of penalties, which could be implemented

based on both the circumstances of the families in question, and the extent of non-cooperation.

The behaviour of parents in Dispute Resolution Services should be a factor if parenting arrangements have to be determined by a court order, and reflected in any rulings made. It is in the best interests of the child for them to maintain a meaningful relationship with both parents wherever a risk of significant harm is not proven. By refusing to engage with support services to this end, a parent does not demonstrate a commitment to putting the needs of their child first. We would consider such behaviour as a threat to both the short and long term emotional wellbeing of children, and therefore a concern which must be recognised and acted upon by the court in the interest of the child. We believe that a parent's willingness to support their child's relationships needs to be considered as a child welfare issue.

#### **24. Do you have any other comments you wish to make on our proposals for private law?**

We are disappointed to see that two significant areas of family law have been overlooked, which represent serious concerns for our members:

- 1) Relocation law. We are aware that evidence was passed on to the Family Justice Review panel by Lord McNally's office, regarding the current widespread criticism of out-dated case law continuing to be applied in current cases. Child welfare research findings are not being taken into account in these cases, and the judiciary in England and Wales face both domestic and international criticism, as highlighted by the event organised by Families Need Fathers and held at the Palace of Westminster last November. We endorse and support the report findings and recommendations of The Custody Minefield, as have members of the legal profession and MPs (in Early Day Motion 373 in 2009).
- 2) We believe that legal aid must be available to parents with learning or communication disabilities, with specialist legal firms funded by Government, and trained in supporting litigants with such disabilities. We find that the very nature of these disabilities and the complexities of our legal system preclude access to justice, and significant human rights implications go unaddressed. While aware of the guidance given to the judiciary by professionals such as Melanie Jameson, we believe that this information as to what 'reasonable adjustments' the court should make are not sufficient in practice, and are not clearly explained to potential litigants.

### **Implementation**

#### **25. Do you have any comments about how these proposals might best be implemented?**

The proposals suggested in this report must be implemented as soon as possible; families cannot and should not have to wait for a system that can

better support them in reaching the best parenting arrangements for their children. A draft bill should be presented at the earliest available point in the next session of Parliament, with an aim to legislation being introduced by 2013. That bill should include a presumption of shared parenting for the reasons set out in this response; the terms 'residence' and 'contact' being replaced with parenting time; there being a greater emphasis on alternative dispute resolution; and the updating of the welfare checklist to take into account a child's UN Convention Rights and changes in parenting and family life which have occurred since the Child Act 1989 came into force.

In respect of relocation law, we accept the proposals expressed in the Washington Declaration made in March 2010, where experts from 50 countries set out the matters which should be considered when determining child relocation in family law. These considerations should be included whether in domestic or international relocation cases, and be built into our domestic laws rather than waiting for a long distant Hague Convention to update our already 40 year old guidance. This can be done via a simple amendment/addition to the welfare checklist.

New Zealand's Care of Children Act 2004 updated their own welfare checklist within family law, to take into account societal change and a child's rights as set out in the UN Convention on the Rights of the Child. The checklist has the benefit of having been tried and tested since it came into force in July 2005. We further propose amalgamating the factors considered within the Washington Declaration, in respect of cases concerning child relocation, and recommend the following legislative changes to section 1 (3) of the Children Act 1989:

1 (3) In the circumstances mention in subsection (4), a court shall have regard to –

- a) The welfare and best interests of the particular child which must be the court's paramount consideration;
- b) For the purposes of this section, and regardless of a child's age, it must not be presumed that placing the child in the day-to-day care of a particular person will, because of that person's sex, best serve the welfare and best interests of the child.
- c) There exists a rebuttal presumption that shared parenting is in the child's best interests;
- d) A parent's or guardian's willingness and ability to promote and safeguard a child's relationships are an important consideration in the balancing exercise;
- e) The principles set out below which are relevant to the welfare and best interests of the particular child in his or her particular circumstances:
  - i. The child's parents and guardians should have the primary responsibility, and should be encouraged to agree their own arrangements, for the child's care, development, and upbringing;
  - ii. There should be continuity in arrangements for the child's care, development and upbringing, and the child's relationships with his or her family, or family group, should be stable and ongoing;
  - iii. The child's care, development and upbringing should be facilitated by ongoing consultation and cooperation among and between the

child's parents and guardians and all persons exercising the role of providing day-to-day care for, or entitled to have contact with, the child;

- iv. The child has the right to maintain personal and direct relations with both parents on a regular basis and in a manner consistent with the child's development, except if the contact is contrary to the child's best interests upon the threshold criteria of significant harm;
- v. The child's safety must be protected and, in particular, he or she must be protected from all forms of violence (whether by members of his or her family, family group, or by other persons);
- vi. The child's identity (including, without limitation, his or her culture, language, and religious denomination or practice) should be preserved and strengthened;
- vii. A child must be given reasonable opportunities to express views on matters affecting the child having regard to the child's age and maturity, and any views the child expresses (either directly or through a representative) must be taken into account;
- viii. The range of powers available to the court under this Act in the proceedings in question.
  - f) With regard to cases involving relocation of the child, either beyond the jurisdiction of the courts of England and Wales, or within the jurisdiction where relocation will affect existing parenting and care arrangements, the court shall also have regard to:
    - i. The parties' proposals for the practical arrangements, including accommodation, schooling and employment;
    - ii. Where relevant to the determination of the outcome, the reasons for seeking or opposing the application to the court;
    - iii. The impact of grant or refusal on the child, in the context of his or her extended family, education and social life, and on the parties;
    - iv. The nature of the inter-parental relationship and the commitment of the parties to support and facilitate the relationship between the child and their immediate and extended family;
    - v. Whether the parties' proposals are realistic;
    - vi. The practicalities and financial burden of travel;
    - vii. Issues of mobility for family members;
    - viii. The enforceability and viability of contact orders made within the jurisdiction of the UK courts under international conventions and agreements in the State to which the child will relocate, and where a mirror order is recommended by the court, that this should be in place prior to relocation if leave to remove is granted.

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