

# **Recent Changes in the Law concerning Shared Parenting**

## **The Family Justice Review**

### **What was the Family Justice Review?**

The Family Justice Review was a review, beginning in March 2011, of the family justice system commissioned by the Ministry of Justice, the Department for Education, and the Welsh Assembly Government.

The Review examined both public and private law cases, explored the use of mediation and examined processes and organisation.

The agencies and professionals directly involved in the family justice system were all in scope for the Review, including:

- courts
- local authorities
- Cafcass and CAFCASS Cymru
- family lawyers
- mediators, and
- the Legal Services Commission.

The Review was led by a panel of experts with an independent chair, David Norgrove.

### **FNF Evidence for the Interim Report**

Families Need Fathers was one of the charities that gave evidence to the review, in the form of a written submission and a presentation before the panel.

The full text of our submission can be found [here](#) or the executive summary [here](#). We argued the following:

- That the current family justice system, generally speaking, fails significantly at meeting the needs of its users. It has a long way to go before meeting the needs in a fair, child-focused, efficient and speedy manner.
- That the Children Act 1989 should be amended to include a presumption of shared parenting.
- The system is not cost-effective.
- The system is unclear and difficult to navigate.
- That there should be greater transparency.

We propose a new family law path. You can see the full document by clicking [here](#). Below is a brief summary:

- All family law solicitors would inform their clients of the newly defined family justice process and shared parenting will be explained from the outset.
- All parents would be obliged to undergo parenting sessions, before they undertake legal action.
- The parenting session would be quickly followed (within 4 weeks) by mandatory mediation. Mediation would be provided by registered practitioners, from the legal profession or elsewhere, including McKenzie friends.
- Once a parenting plan has been agreed the parents will come before a judge who will effectively make a consent order, which can be done by simply registering the agreement with the court, with judges able to hold a hearing where they thought there was good cause. Judicial approval would be given within a defined timeframe, ideally around 4-6 weeks
- If parents cannot agree or one parent is resistant to parenting time arrangements they would undergo a high-conflict parenting course.
- The parents would automatically come before a judge 3 months from the initial agreement to confirm the arrangement is working satisfactorily. If not, a parenting support workshop will be made available.
- If after an order or parenting plan has been agreed, and one parent breaches the order or arrangement, the parents will have to immediately return to Court, before their assigned judge (where possible) within 24-48 hours to resolve issues.
- If an order/ parenting plan has been breached parents would have to attend or return to the high-conflict parenting course and they would have to return to court again.

We believe that our proposed path will result in substantial savings to the individual and the state. You can find our document costing our proposed path [here](#).

## **The Interim Report**

The Family Justice Review's Interim Report, published on 31<sup>st</sup> March 2011, can be found here.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/162316/family-justice-review-interim-rep.pdf.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/162316/family-justice-review-interim-rep.pdf.pdf)

The following points were made:

### The Court System

- The report recognised the harmful effects of parental conflict on children in court cases, but argued that the private law system is designed to reduce this impact.
- Parenting Agreements between the parties should set out how they will jointly exercise their parental responsibility following separation.
- The panel recommended the introduction of an online information hub for family related issues, supplemented with a telephone helpline.
- It also proposed renaming 'Alternative Dispute Resolutions' to 'Dispute Resolution Services', so that such services do not appear secondary to the court.
- It advocated judicial continuity in court, but only in complex cases.

- The panel highlighted the need for fast-tracking the court process and recommended a 'simple track' facility, in which short hearings would be carried out for each party could be heard.
- Removal of the terms 'contact' and 'residence' to remove perceptions of winners and losers in the court system was recommended.

#### Shared Parenting

- The report equated 'shared parenting' to 'equal time for both resident and non-resident parent'.
- The panel recognised the importance of shared parental responsibility post-separation, and proposed the incision in legislation of a reference to the child's right to a meaningful relationship with both parents.
- However, it also argued that shared parenting 'is already the aim of current legislation and case law', and that both parents usually share parental responsibility in the current system.
- The report argued that a presumption of shared parenting could compromise the wellbeing of the child by 'creating the perception that there is a parental right to substantially shared or equal time for both parents'.
- The panel preferred the insertion of a 'general statement of intent' to the Children Act 1989 to reinforce the importance of maintaining a meaningful relationship between a child and both parents.
- The panel recognised the importance that grandparents play in children's lives, and suggested that the maintenance of extended family relationships should be built into the process of Parenting Agreements. However, the report recommended that the need for grandparents to apply for leave should remain, since, like parents, grandparents do not have a 'right' to contact with their grandchild(ren).

#### **FNF Response to the Interim Report**

Though pleased to see debate concerning the reform of the family justice system, we believed that the proposals in the interim report did not address the problems faced by separating parents. We provided the following response:

- Nearly a third of children whose parents separated at least three years previously have no contact with their 'non-resident' parent. In addition, one million grandchildren have lost contact with a grandparent, reflecting the great need for reform in this area.
- We believe that the Interim Report lacked clarity regarding how the different branches of the new Family Justice Service would be coordinated.

- 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 believe that Cafcass should only be involved where serious cases of violence or abuse have been identified or alleged.
- We welcome the Interim Report's desire to place the child's interests and welfare at the forefront of the family justice system. Children must be made aware of their options, though it must be made clear to them 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, and not simply relayed by a parent.
- We believe that professionals 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.
- We believe that the courts too often fail to make use of powers introduced by Parliament to safeguard a child's relationships.
- 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.
- We believe there is an urgent requirement for legislation formally recognise the importance of children having a meaningful relationship with both parents, and that the proposals recommended by the report do not go far enough. To enjoy the full benefits of a meaningful relationship with both parents, children must have both parents fully involved in all aspects of their lives, including schooling, health, leisure, and day to day care.
- We believe that the dismissal of the shared parenting presumption in the Interim Report, as a supposed 'fathers' rights issue', is misguided, as it fails to recognise the importance of both parents to families, communities, and, most importantly, children.
- The interpretation of shared parenting as an equal division of time is also a false representation of the issue. Rather, it is about sustaining a meaningful relationship between a child and both parents, where this is safe, in order to secure the best interests of the child.
- We welcome the removal of the terms 'contact' and 'residence' from private family law cases, since they imply a 'winner-takes-all' approach to parenting arrangements, in which the 'contact' parent is merely a visitor in the child's day to day life, rather than a fully involved parent.
- We fully support the promotion of Parenting Agreements where there are no welfare concerns. Parental cooperation rather than conflict, at the same time as avoiding the financial and emotional costs of litigation, are far more likely to put the child's interests first.

[http://www.fnf.org.uk/downloads/FJR\\_Interim\\_Report\\_FNF\\_Response.pdf](http://www.fnf.org.uk/downloads/FJR_Interim_Report_FNF_Response.pdf)

In our press release following the Interim Report, Craig Pickering, CEO of Families Need Fathers, concluded that the report represented a clear step forward in establishing shared parenting, if not a big enough one.

To read our press release about the report [click here](#).

## **The Final Report**

The Family Justice Review published its Final Report in November 2011, which can be found [here](#).

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/162302/family-justice-review-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/162302/family-justice-review-final-report.pdf)

The report recommended no change in the law to establish a presumption of shared parenting. Nor did it recognise the need for a child to maintain a meaningful relationship with the parent who no longer lives with them.

The report concluded that:

- No legislation should be introduced that creates or risks creating the perception that there is a parental right to substantially shared or equal time for both parents.
- The need for grandparents to apply for leave of the court before making an application for contact should remain.
- Parents should be encouraged to develop a Parenting Agreement to set out arrangements for the care of their children post separation.
- Government should develop a child arrangements order, which would set out arrangements for the upbringing of a child when court determination of disputes related to the care of children is required.
- Government should repeal the provision for residence and contact orders in the Children Act 1989.
- The new child arrangements order should be available to fathers without parental responsibility, as well as those who already hold parental responsibility, and to wider family members with the permission of the court.
- Government should establish an online information hub and helpline to give information and support for couples to help them resolve issues following divorce or separation outside court.
- Where intervention is necessary, separating parents should be expected to attend a session with a mediator, trained and accredited to a high professional standard.
- Those parents who were still unable to agree should next attend a Separated Parents Information Programme and thereafter if necessary mediation or other dispute resolution service.

## **FNF Response**

As we argue in our press release, the recommendations made in the Final Report of the Family Justice Review were inadequate to address the deep-seated problems at the heart of the family justice system. The report failed to provide for children maintaining meaningful relationships with both parents and their wider family following family breakdown. We urged the Government to reassess the Report's recommendations before proposing legislation.

<http://www.fnf.org.uk/news-and-events/press-releases/2011-archive/120125>

## **The Government's Response**

In February 2012, the government published their response to the Family Justice Review

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/177097/CM-8273.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/177097/CM-8273.pdf)

, which:

- Pledged support for families reaching their own Parental Agreements, rather than relying too heavily upon the adversarial court system, apart from in a minority of cases where this may not be appropriate.
- Aimed to simplify and speed-up the court system, at the same time as improving dispute resolution services outside the court.
- Endeavoured to uphold the paramountcy principle, focusing primarily on the best interest of the child.
- Recognised the important role that grandparents play in a child's life.
- Expressed the belief that 'children benefit from both parents being as fully involved as possible in their child's upbringing, unless there are safety or welfare concerns'.

Most importantly, the Government differed from the Family Justice Review in its view that the importance of the role of both parents' role in their child's life needs to be enshrined in legislation, apart from in a minority of cases where inappropriate, to serve the best interest of the child.

As argued in our press release, Families Need Fathers welcomed the Government's response as a positive step forward for the welfare of children, both in terms of the proposed improvements made within the court system, and Government support for parental agreements made outside the courtroom. Moreover, Governmental recognition of a child's need for emotional support from both parents is a great advancement in legislative terms.

<http://www.fnf.org.uk/news-and-events/press-releases/2012-archive/120509>

## The Consultation on Cooperative Parenting

In June 2012, the Department for Education and Ministry of Justice commissioned a public consultation to examine the benefits of cooperative parenting, and to evaluate existing services to support separated parents.

Families Need Fathers and others were invited to analyse the Government's plans to introduce legislation that stipulated that, in the majority of cases, children benefit from the involvement of both parents in their lives following divorce or separation.

Despite fears that presumption of shared parenting could result in interpretations of a 50/50 split or undermining of the paramountcy principle, it proved to be the most popular legislative approach, favoured by 52% of respondents. Shared parenting was supported as a speedier, fairer and more robust way to bring solutions, resulting in increased children's wellbeing by maintaining relationships with both parents. A presumption of shared parenting could address perceived bias and increase public confidence in court system, whilst decreasing conflict between parents by reinforcing joint responsibility for children.

The full report can be found here:

<http://media.education.gov.uk/assets/files/pdf/g/government%20response%20to%20the%20shared%20parenting%20consultation.pdf>

### Families Need Fathers' Response

FNF provided evidence to the consultation. We demonstrated that legislation with a presumption of shared parenting is the best-suited option to meet the governments' objectives for family law, and that it fleshes out, rather than competes with, the paramountcy principle.

We also showed that other options lacked clarity in the attempt to meet governmental aims. Whilst explicitly excluding the minority of cases where risk to the child's welfare or safety exists, a presumption of shared parenting recognises the great importance of full involvement of both parents in a child's life.

Research proves that shared parenting benefits a child's emotional wellbeing, in addition to increased educational achievement and lowered risk of delinquent behaviour. The presumption is also likely to reduce the number of applications for court to determine contact arrangements, which supports the Government's goal to increase out-of-court dispute resolution, such as mediation. Legislation would give impetus for parents in intractable disputes to engage constructively to such services.

FNF evidence can be found here. [http://www.fnf.org.uk/downloads/Co-operative Parenting Following Family Separation Consultation FNF response Final.pdf](http://www.fnf.org.uk/downloads/Co-operative%20Parenting%20Following%20Family%20Separation%20Consultation%20FNF%20response%20Final.pdf)

### The Government's Response

After consideration of all points raised in the Consultation of Cooperative Parenting, the Government maintained that an amendment to the Children Act 1989 with the presumption of shared parenting would best meet its objectives. The Government recognised the need to safeguard the wellbeing of vulnerable children and parents, but in the majority of cases,

strove to ensure that children benefit from sustained relationships with both parents following family separation.

In response to the Consultation, Edward Timpson MP declared that “the Children Act 1989 has contributed to a perception that the law does not fully recognise the important role that both parents can play in a child's life”.

The Government expressed a preference for resolution of disputes outside of court, wherever possible, and recognised the need for improvement of available services in order to overcome perceived bias in the court system. Mr Timpson also recognised that shared parenting does not equate to shared time rights, and that “courts will continue to make decisions based on children's best interests.”

General article on government response:

<http://www.education.gov.uk/aboutdfe/departmentalinformation/childrenandfamiliesbill/a00216607/family-justice-reform-cooperative-parenting>

Full government response:

<http://media.education.gov.uk/assets/files/pdf/g/government%20response%20to%20the%20shared%20parenting%20consultation.pdf>

Explanatory note of shared parenting:

<http://media.education.gov.uk/assets/files/pdf/s/shared%20parenting%20clause%20explanatory%20notes%20and%20process%20map.pdf>

## **The Children and Families Bill**

### **Draft Legislation**

The Government's responses to the Family Justice Review and the Consultation of Cooperative Parenting culminated in the development of the Children and Families Bill, drafted in February 2013.

The Bill aims to:

- Make a requirement to attend a family mediation, information and assessment meeting.
- Clarify that courts will take account of the principle that both parents should continue to be involved in their children's lives where that is safe and consistent with the child's welfare.
- Introduce a new “child arrangements order”, replacing residence and contact orders.
- In the event of a breach to a contact arrangement, direct the parties to undertake activities designed to help them understand the importance of complying with the order and making it work.



<http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0032/en/14032en.pdf>

## **FNF Evidence for Children and Families Bill**

On 20 November 2012, oral evidence was given to the Justice Select Committee, a small committee that reviewed the draft legislation.

Ken Sanderson, our Chief Executive Officer, spoke on behalf of Families Need Fathers. He conferred with the Government that:

- Shared parenting does not mean an equal split of time.
- The child's welfare, through the paramountcy principle, overrides everything. The presumption of shared parenting does not replace the paramountcy principle. Courts will not see the presumption as an overriding factor, but they will adhere to the welfare checklist.
- The importance of the presumption of shared parenting is in its cultural effect. It should encourage more people to look at agreements outside of court, since they will realise that the courts will no longer operate in a winner-takes-all situation, where one parent can be completely frozen out.
- YouGov research published in the summer showed that 85% of the population agreed that both parents should have a role to play post-separation. Therefore, the Government is right to legislate that, in normal circumstances, both parents should be involved in their children's upbringing.
- In Australia, in the six years since the introduction of a shared parenting presumption, the number of cases coming to court involving children has fallen by 32%. We could see the same fall in cases involving children.
- 'Substantial involvement' means being involved in all aspects – practical, social and emotional – of a child's wellbeing.

For the full FNF evidence, click here

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/uc739-ii/uc73901.htm>

## **Pre-legislative Scrutiny: the Justice Committee Report**

In December 2012, the Children and Families Bill's pre-legislative scrutiny recommended that:

### Mediation:

- Family Mediation Information and Assessment Meetings (MIAMs) will be set out in the Family Procedure Rules.
- Well-trained family mediators should be just as able as legal practitioners to identify cases of domestic abuse.
- A child's voice is important and may have a role in persuading parents to mediate, or to focus discussion within the MIAM. We recommend that the Government look again at the MIAM process with recognised mediation organisations to produce guidance on how the child's voice can be heard within the MIAM.
- The National Family Mediation's found that 83% of people go to a lawyer first. The report concluded that early MIAM attendance is best encouraged by the Government working with legal practitioners and mediators.

### Child Arrangements:

- The committee reported that it is unlikely that a change to the wording of orders from 'residence' and 'contact' to 'child arrangements order' will remove the perception of winners and losers within the family courts.
- The committee expressed concern relating to how, from the drafting of the clause and the mixing of the different elements of living and spending time with, the Court is able to decide with whom a child is to live, and the time and type of communication they will have with the non-resident parent.
- The report argued that there is potential for problems because the looser language of the draft clause makes the meaning of the subsections more debatable. It recommends that the clause set out that the person with whom the child is to live has rights of custody for the purposes of the Hague Convention and other relevant international family law treaties.

### Shared Parenting:

- The committee fully supported the principle that, where there is no potential harm to the welfare of a child, both parents should be involved in that child's life.
- The report recognised the importance of involvement of both parents in a child's life as beneficial and in the interests of the child. However, the report cited abuses cases to argue that shared parenting cannot be 'presumed'.
- The committee stated that there is a danger that the introduction of a second presumption will take the attention of the Court. In addition, the committee argued, the presumption could take the attention of parents away from determining what is in the child's best interests and on to double rebuttal on the grounds of harm.
- The committee believed that, on its face the draft clause on shared parenting does not give or imply rights to equal time, but that many parents will misunderstand the clause as giving such rights because of the use of the word 'involvement' without definition, and because of the use of a presumption.
- It recommended that the draft clause should be revised to include a definition of 'involvement' setting out that it does not give or imply a right to a set amount of time.
- The report claimed that it is unlikely that the draft clause on shared parenting, on its own, will change perceptions of bias within the family court system, many of which are entrenched.

The pre-legislative scrutiny concluded: "we maintain significant concerns about whether the draft clause is a necessary or desirable legislative change."

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/739/73907.htm>

### **FNF Response:**

Ken Sanderson, on behalf of FNF, wrote a letter to Sir Alan Beith MP, Chair of the Justice Committee, counteracting the arguments made against legislation in support of shared parenting with the following evidence:

- Great Britain ratified the UNCRC on 16 December 1991 but we do not have effective legislation and guidance in place to ensure that 'article 9' can be fully supported. This is, and should be, an embarrassment to us all.
- Sir Alan Beith claimed there was no evidence to suggest that Judges were not starting from a position in favour of contact being maintained with both parents. FNF's experiences, since our foundation in 1974, have proved that, in reality, this may sometimes be the case. Moreover, maintaining contact is not the same as

shared parenting, leading to wholly unsatisfactory templates of minimal contact, without any regard of the child's best interests.

- Many parents feel beaten down by the legal system, or cannot afford further protracted legal action, or lack the confidence to represent themselves effectively. This should not be read as evidence that these parents do not want to take on their parental responsibilities.
  - Sir Alan Beith claimed that an amendment in legislation for 'involvement' will be equated in the minds of warring parents as a right to equality of time. However, the Act and subsequent secondary legislation, Government guidance, and the President of the Family Court can ensure that shared parenting goes well beyond equality of time.
  - A single piece of research, that 90% of separating parents do not use the courts, is greatly overemphasized by some commentators. Many parents are deterred from going to court for reasons that have nothing to do with the best interests of their children.
  - As well as taking on board that there may have been pitfalls in the Australian 2006 legislation for shared parenting, the positive effects should also be taken into account:
- Australian judges did not define meaningful relationships in temporal terms and did not assume that equal time was the norm. In the majority of cases the level of contact was not defined.
  - There is no evidence that the Act led to an increase in shared care orders in cases where one partner had a record of domestic violence, nor that the Act put any child, woman or man at greater risk of abuse.
  - Parents who contributed jointly to decisions about their child were more likely than other parents to say that they were complying fully in providing child support payments.

[http://www.fnf.org.uk/downloads/FNF\\_Letter\\_Sir\\_Alan\\_Beith\\_MP\\_20\\_07\\_12.pdf](http://www.fnf.org.uk/downloads/FNF_Letter_Sir_Alan_Beith_MP_20_07_12.pdf)

### **Research Paper for the Bill**

Following the Justice Select Committee's scrutiny of the draft of the Children and Families Bill, the Government responded:

#### Mediation and Family Court Proceedings

- Continued promotion of the use of Family Mediation with an aim to harmonise accreditation standards.
- Reiterated Governmental intentions to set a time limit of court proceedings of 26 weeks on the face of the Bill, rather than through secondary legislation.
- Fathers without parental responsibility (PR) who effectively practice PR following a court order should be formally recognised and awarded PR by the courts.
- Where a wider family member would need PR to fulfil the order, the PR order should be limited to the duration of the order.

#### Shared Parenting

The Government did not accept that the draft clause might require amendment to avoid a conflict between the paramountcy principle, and the presumption that both parents should be involved in a child's life.

The Government pointed out that:

- The presumption makes clear that shared parenting only applies to a parent who can be involved in a way that does not pose a risk of harm to the child, and is rebutted if there is any evidence to suggest that the child's welfare would not be furthered by the involvement of that parent.

The Government also expressed its belief that the change would encourage a less adversarial approach to child contact cases and help changes of perceived bias in the court system.

- "The amendment will provide greater clarity and transparency in relation to the court's decision-making process. In doing so, it will encourage the resolution of agreements outside court by making clear the basis on which courts' decisions are made... The Government anticipates that, over time, this change will contribute to a societal shift towards greater recognition of the value of both parents in a child's life, and to a reduction of the perception of bias within the court system".

The Government reiterated that the Bill clarifies that the purpose of the clause is *not* to promote the equal division of a child's time between parents. Nor does the Bill give or imply a right to a set amount of time. Rather, the appropriate level of parental involvement will depend on the facts of a given case, and will be determined by the judge.

The Government accepted the recommendation of the Committee of the heading of this clause as 'Welfare of the Child: Parental Involvement'.

Full research paper: <http://www.parliament.uk/briefing-papers/RP13-11.pdf>

## The Second Reading of the Bill

The Children and Families Bill was debated in Parliament at its Second Reading on 25 February 2013. Parliamentary Under-Secretary of State for Education, Edward Timpson, opened the debate. Shadow Secretary of State for Education, Stephen Twigg, responded on behalf of the Opposition.

<http://www.parliament.uk/business/news/2013/february/commons-second-reading-children-and-families-bill/>

In the Second Reading, **Tim Loughton MP** detailed the problems that many non-resident parents (usually fathers) experience in their attempts to maintain meaningful relationships with their children. He condemned the legal system for its failure to deter or prevent resident parents to exclude non-resident parents. Mr Loughton highlighted the differences in Australian law on shared parenting, and the proposals of this Bill. He emphasised the importance of the wording of the Bill in making clear that this is absolutely not a presumption about equality of time, but aims instead to ensure as much parental involvement by both parents as possible, subject to the welfare provisions, which stay paramount in the Bill.

**Stephen Twigg MP** commented that 'there is a gap between the Government's intention and what might happen in practice'.

**Sir Alan Beith MP** recognised the importance of maintaining high standards of skilled mediation, but concluded that no amendment for shared parenting was necessary, since he believed that this would undermine the paramountcy principle. He opposed Mr Loughton's views, arguing that media coverage of the Bill would lead to public misconceptions of its intentions. He claimed, 'if an expectation has been created by press reporting... we risk disappointing many non-resident parents' who may believe that the courts will look at the issue in terms of shared time.

**Tim Loughton** reiterated that shared time would be a misconception, suggesting that this should not prevent the Government from passing the legislation. Instead, when the new legislation is enacted, the general public and the press will need to be educated as to its exact entailments, and the consequences of this for separating parents.

In addition, he made clear that the provision is not about giving rights to parents, but about the responsibilities of parents and the rights that children should have for the involvement of both parents in their lives. Thus the paramountcy principle would remain in full force.

"We want to keep more cases out of the courts, to be agreed amicably in the best interests of the children. That is what it is about".

The full debate can be found on Hansard:

<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130225/debtext/130225-0002.htm#13022511000001>

A video of the debate can be viewed here:

<http://www.parliamentlive.tv/Main/Player.aspx?meetingId=12638&player=silverlight&st=16:41:10>

A summary of the Family Justice clauses of the Bill, and the forum of public responses to it, can be found here:

<http://www.parliament.uk/business/bills-and-legislation/public-reading/children-and-families-bill/family-justice/>

## **FNF Response to the Children and Families Bill**

The Public Bills Committee reviewed the legislation after it passed through the House of Commons at the Second Reading.

FNF provided evidence at this Committee, specifically regarding the Clause 11, 'Welfare of the Child: Parental Involvement'.

<http://www.publications.parliament.uk/pa/cm201213/cmpublic/childrenandfamilies/memo/cf70.htm>

The overarching objective of our submission was to address misconceptions about the current legislation proposed in Clause 11 of the Children and Families Bill, and the case made against it in its Second Reading.

More specifically:

a) that the Bill would not meet the Government's objectives with regard to parental involvement;

b) that legislation on parental involvement would conflict with, or have a negative impact upon, the paramountcy principle, and;

c) that the Bill will lead to a perception amongst parents that there is a requirement for courts to presume that there will be an equal, or near equal, division of time in all cases.

Our main points were:

#### The Bill Meets the Government's Objectives:

- The wording of Clause 11 in the Bill represents the correct course of action to achieve the Government's objectives of continued involvement of both parents in a child's life, where to do so would not place the child or a parent at risk of harm, and to encourage parents to reach agreements outside of court regarding post-separation child arrangements.
- There is a gulf between the argument made against legislation in this area that there is no evidence of bias against 'non-resident' parents in the family justice system, and how parents and the wider public perceive the family justice system and their experiences:

*A recent survey for the Channel 4 Dispatches programme Sharing Mum and Dad found that 84% of respondents believed that the family justice system favours mothers over fathers, and 88% believed that the law needs updating with regards to parental separation . YouGov in June 2012 found that 95% of Britons agree that both parents should share responsibility for bringing up children, and 86% agreed that the role of fathers has changed drastically over the past 50 years .*

- It is not enough for a justice system to be fair in the way it reaches decisions and outcomes; *it is crucial that it is also seen to be fair by the public it serves.*

#### The Bill Strengthens the Paramountcy Principle

Concerns have been raised by some stakeholders in the family justice system that legislation could dilute the paramountcy principle by focusing on parental rights rather than children's welfare.

Claims that the provisions for a presumption of parental involvement as drafted in the Children and Families Bill would put children at risk are without foundation.

- Equating the clause with a challenge to the paramountcy principle illustrates a number of misconceptions about the nature and purpose of this legislation. Firstly, parental involvement is not a parental rights' issue, to be placed in competition with children's welfare, but is one of children's rights and parental responsibilities. The only purpose of a presumption of involvement is that within a strict set of circumstances where there is clearly no risk to the child's welfare, it is presumed that the continued involvement of both parents "will further the child's welfare".

- Secondly, the clause is a presumption, not a prescription. *There is no way of interpreting the wording of the clause in its current form to imply that parents have an automatic right to contact, let alone set levels of time.*

### Perceptions of Parents

- The wording of the Bill and the explanatory notes of the presumption make it very clear that there would be no presumption of equal or near equal time. Reference to media reports framing the legislation as parents gaining 'equal rights' to children is very poor justification for inaction. Given the complexity of family law, this can be overcome through education, just as concepts such as the paramouncy principle and terms such as 'contact' and 'residence' need to be explained to parents.
- Whilst legislation continues not to clearly recognise the responsibility of both parents to contribute to their children's continued wellbeing, this perception will be impossible to change.
- The importance of a legislative presumption of involvement is one which goes far beyond the cases which end up in the family justice system. All parenting arrangements are made within 'the shadow of the law'; it is certainly not uncommon for potential applicant parents to be told that they are at a disadvantage in law if they were to make an application, and that their future involvement is likely to be limited.

### **The Need for Reform**

There is a very real need for a presumption of parental involvement, and that such legislation is necessary to achieve the Government's objectives in relation to private family law. To do so would neither hinder nor compromise the paramouncy principle, and would not require courts to adhere to a 'one size fits all' approach to family law. It would, however, be a significant step in updating legislation to better fit the wishes and expectations of the public the family justice system it is there to serve, whilst also addressing the perception that it does not offer a level playing field between parents.

The current drafting of the Bill provides appropriate safeguards to ensure that the best interests of children remain the paramount consideration for courts in determining arrangements for children.

## **The Children and Families Bill in the House of Lords**

The report stage and third reading of the Children and Families Bill took place in the Commons Chamber on Tuesday 11 June 2013.

This was the final stage of the Bill's progress through the House of Commons, before being passed to the House of Lords.

To read the Bill as brought forward from the Commons on 11 June 2013, click here:

<http://www.publications.parliament.uk/pa/bills/lbill/2013-2014/0032/14032.pdf>

The First Reading in the House of Lords took place on 12 June 2013, and the **Second Reading** debate followed on 2 July 2013.

During the debate, the following points were argued:

**Lord Nash** made clear that the Government is determined to ensure that the needs of children are put at the heart of the Bill.

He highlighted the urgent need to reform the services which are currently failing children and their families, who often find themselves having to fit in with the current system, rather than finding the system tailored to their needs. Lord Nash argued that this is what the Bill aims to do.

Lord Nash brought the Lords' attention to the unnecessary delays in family courts that children face. He emphasized that it is unacceptable that a child waits over 42 weeks on average for their care or supervision case to be resolved. Therefore, more needs to be done to address delays in ensuring a stable placement for the child as quickly as possible. To that end, the Bill includes measures to introduce a maximum 26-week time limit for legal proceedings.

Lord Nash emphasized that the needs of children remain firmly at the centre, both of the Bill, and the private legal system, in clarifying that the Bill's parental involvement clause will not override the paramountcy principle, but will make it absolutely clear that both parents should remain involved in their child's life after separation, where it is safe for the child.

In addition, Lord Nash pledged support for mediation, information and assessment meetings in order to encourage more parents to agree arrangements for their children outside court.

**Baroness Hughes of Stretford** responded in support of the 26-week time limit, but highlighted the need for safeguards to ensure that complex issues are not overlooked.

She then reemphasised that, though very strongly supporting the principle that both parents should remain involved in a child's life after separation, the child's interest must remain paramount.

However, she welcomed the Minister's assurance that Clause 11 for shared parenting will not dilute the paramountcy principle, whilst calling for further scrutiny of the clause in order to examine its practical implications in order to prevent any apportionment of children's time to satisfy shared parenting.

**Baroness Walmsley** highlighted that 'the child has the right to family life under the UN Convention on the Rights of the Child, and the state should facilitate that unless there is danger to the child.

**Baroness Butler-Sloss:** recognised that in some court cases 'there is a hard core of parents who fight out their failed relationship in the arena of the court over child issues. The relationship has soured and become corrosive... I take the view that in this highly charged state, parents are the last people who should be making decisions about their children's relationship with the other parent.'



She described the presumption of shared parenting in Clause 11 of the Bill as 'a clash of two potentially opposing presumptions: paramountcy of the child's welfare and presumption that involvement of the parent will further the child's welfare.'

She did, however, recognise that 'We have to be seriously concerned about a substantial group of children whose fathers have no further, or virtually no further, contact with them after separation from the mother.' Yet, 'the wording of Clause 11, aided by press publicity... has raised unrealistic expectations that in future the parent, usually the father, will be entitled to play a substantial part in the future life of the child, regardless of issues about the child's best interests.'

'I suggest that the word 'presumption' should be deleted and the words 'pay particular regard to' inserted. This would highlight the importance of the involvement of both parents without the legal problem of competing presumptions and, I hope, lower the degree of false expectations by parents of the degree of involvement that can be achieved.'

Baroness Butler-Sloss also opposed eradication of the terms 'residence' and 'contact', stating that this may be ineffective in meeting Government objectives, or that it would undermine international relations in proving a right of custody in cases of abduction.

**Baroness Jones of Whitchurch:** expressed concern that 'dogmatic time limits [of court proceedings] might jeopardise the interests of the child'. She went on to argue that shared parenting 'should not be at the expense of a child's welfare, and there is a danger that this paramount principle will be compromised in the new formulation. We look forward to exploring and improving this wording as we progress in the Bill'.

She did not, however, explain the reasons why, in her view, shared parenting competes with the paramountcy principle.

**Lord Nash** concluded the Reading, reiterating the need for moving forward on a cross-party basis. He reemphasized the need to improve children's services is the Bill's absolute priority, since 'all children deserve stable, loving homes to thrive'.

Lord Nash concluded that 'the Government are clear that the provision in Clause 11 does not change the principle that the welfare of the child must be the court's paramount decision... Wherever possible, parents should work together to resolve disputes about their children's care. This clause will encourage them to do so by making clear that unless there is a good reason, children should have a relationship with both their parents. Of course, however, it will not achieve this by itself. That is why we are putting in place a wider package of measures to help parents, including better information, advice and support outside the court system.'

To read the Second Reading on Hansard, click here:

<http://www.publications.parliament.uk/pa/ld201314/ldhansrd/text/130702-0001.htm>

General page relating to the House of Lords Second Reading:

<http://www.parliament.uk/business/news/2013/july/lords-children-and-families-bill/>

## Remaining Stages of the Bill

- The next stage of the Children and Families Bill will be the Committee stage; a line by line examination of the Bill. The Committee stage is yet to be scheduled.

To keep updated with the progress of the Bill, follow this link:

<http://services.parliament.uk/bills/2013-14/childrenandfamilies.html>

For a more detailed review of the stages undertaken in the passage of the Bill to date, click here:

<http://services.parliament.uk/bills/2013-14/childrenandfamilies/stages.html>