



Public Services Challenge – Family Law Reform

Overview

The following proposals have been developed by the ManKind Initiative along with the Coalition for Equal Parenting over a long period of time.

During the period from 2001 to early 2003 we lobbied the Labour Government for a Legal Presumption of Contact starting with minor officials in the Lord Chancellor's Department, as it was known, through to Rosie Winterton, Margaret Hodge and Lord Filkin. By 2003 it was clear that reform would not come through a Labour Government and we turned to the Conservatives in the form of Oliver Letwin who was Shadow Home Secretary.

Through Oliver Letwin's invaluable help, guidance and his immediate grasp of the meaning of a Legal Presumption of Contact in Private Family Law cases, we subsequently secured the support of Dominic Grieve who organised Early Day Motion 1755 calling for a Legal Presumption of Contact. This was undertaken on 15th October 2003 in the House of Commons under the chairmanship of ManKind and repeated as Early Day Motion 299 in early 2004.

We were present at the Conservative Family Conference on July 12th 2004 where the benefits of Shared Parenting and a Legal Presumption of Contact were placed firmly on the agenda. A subsequent amendment to the Children Act 1989 was proposed by Theresa May, Shadow Minister for Children asking for a Legal Presumption of Contact. This was voted down by a combination of Labour and Liberal Democrat votes.

There is now no doubt that reform is inevitable under a Conservative administration and it is crucial that we do not miss the opportunity to correct the mistakes of the past when you come to power.

We now urge you to ensure that the following key areas of policy are incorporated into the reform process :

Legal Presumption of Contact

Mandatory Mediation

Joint Custody Orders to be the commonplace order unless there are child safety issues

Custody orders to be the last resort and only used for cases of child safety or failure of parenting plan

These issues are dealt with fully in the proposals and we would further request that peripheral issues relating to school records, medical records and name changes form part of the process.

Finally, we would propose that an Ombudsman, independent of the Judiciary, is appointed to ensure that the practice of Family Law is no longer able to act without accountability or scrutiny.

The Problem

For many years now it has been widely acknowledged that at least 40% of children lose all contact with their “non-resident” parents within 2 years. This is the opposite of what Parliament intended. It is also the opposite of the Government’s stated aim that both parents should continue to be fully involved in their children’s upbringing, except where it would be unsafe.

Defining what is in the Best Interests of Children:

Universal research shows that children do better in life, on all measures, where they are raised by both parents. They do better academically, socially and in their own adult relationships in later life. They are more likely to stay away from crime and drugs. They are more likely to become better parents themselves.

In July 2004 the Government published its consultation document “Parental Separation: Children’s Needs and Parents’ Responsibilities” (hereafter “the Green Paper”) in which it stated:

“After separation, both parents should have the responsibility for, and a meaningful relationship with, their children, so long as it is safe. This is the view of most people in our society. And it is the current legal position.”

We agree that this is the position of most people in our society. Undoubtedly it was the intention of Parliament behind the Children Act 1989. If it is indeed the current legal position, why is it not being put into effect by our family justice system? Why are judges and CAFCASS allowing hostile “resident” parents to block the other (so called “nonresident”) parent’s access (so called “contact”) with their children – sometimes totally – even when there is no safety issue whatever?

Why then are so many family court judges and CAFCASS officers being permitted to act contrary to this “current legal position”, by excluding and degrading non-resident parents, and (as a direct consequence) grandparents and the children’s wider extended family? Why are these State institutions being allowed to continue doing what is patently contrary to the best interests of children?

Those who have the ear of this Government do not appear to have any direct experience of what the private family justice system actually does to children and

families throughout this country every day. There is a huge gap between the Government's perception and reality. It is difficult to see how effective improvements can be made whilst this gap persists.

The Government itself stated in the Green Paper: -

"And children whose fathers have been actively involved in their lives experience better outcomes in the following areas:

Higher educational achievements
More satisfactory relationships in adult life
Protection from mental health problems
Less likelihood of being in trouble with the police"

But where in this Green Paper with the credible proposals to remedy the fact that so many children are needlessly losing one parent (usually their father; sometimes their mother) after divorce and separation? Where is the legal machinery that will deliver what the Government says it wants to achieve?

The Wrong Message:

The Green Paper claimed that the reform proposals contained within it were the product of consultations with (among others) parents. It says this,

"The key message from the parents was that they wanted help and support to navigate the emotional and practical issues they faced during the breakdown of their relationship. These proposals seek to respond to this."

ManKind as part of the Coalition has long been one of the main stakeholders representing parents and grandparents in the consultations process. We would have to say that we must have been attending some different consultation meetings altogether. For the key message that we have consistently delivered at every meeting (including the final ones led by Lord Filkin, and in every communication we had with Government) was that the law was defective because hostile resident parents were being allowed (even encouraged) to exclude non-resident parents.

We repeated time and time again that the law lacks an express legal presumption that all parents should have an automatic right to substantial contact (which we prefer to call "parenting time") with their children, unless there was a safety risk. This is also the "key message" that we hear from Members of Parliament, across all political parties, who receive a constant stream of complaints about the family courts from excluded parents and grandparents.

In her "The Paul Sieghart Memorial Lecture" on 3 April 2003, our top family judge, Dame Elizabeth Butler-Sloss, President of the Family Division, said:
"60% of fathers have little or no continuing relationship with their children post-separation."

Mr Justice Munby, another very senior member of our judiciary, took the unusual step on 1 April 2004 of issuing a public High Court Judgment that was scathing of the family court system. He said in Judgment the following:

“On 11 November 2003 a wholly deserving father left my court in tears having been driven to abandon his battle for contact with his seven year old daughter That battle had lasted for precisely five years....and father has not even seen his daughter since 1 December 2001....From father’s perspective the last two years of the litigation have been an exercise in absolute futility....it is shaming to have to say it, but .. It is very, very disheartening. I am sorry there is nothing more I can do.”

In our experience, the sort of case that Mr Justice Munby describes is all too common – except most excluded parents give up in despair long before this father did.

Other senior members of the judiciary have been calling on the Government to solve this problem for years, including Lord Justice Thorpe, Mrs Justice Bracewell and Lord Justice Wall. The fact that the Government has somehow managed to miss our key message - explains why the proposals contained in the Green Paper have disappointed so many people.

Government’s Proposals are Bankrupt:

There is nothing in the Government’s proposals to effectively address the core problem of hostile resident parents being free to deny their children’s right to parenting time with the other parent. There is nothing to secure the children’s right to parenting time with both their parents when it is being obstructed without there even being any safety issue at all. Obstructive de facto custodial parents can block reasonable access in many cases without even raising a substantive issue!

The inactivity of the family courts after an application has been made creates a power imbalance in favour of the parent who seeks to frustrate the other parent’s relationship with their children. The 'no order' principle means that an order (securing the children’s meaningful “contact” with the other parent) will not be made until the court has completed an investigation.

However, where there is no allegation on either side that a parent represents some sort of safety risk, it is unclear what any such investigation is supposed to achieve or focus on. Indeed, investigations in these circumstances simply make matters worse and create unnecessary delays.

The No Order Folly:

The no order principle embodied in the Children Act 1989 means that a court should not make an order unless it is in the best interests of the children to do so. The way this is being generally applied by courts and CAFCASS is this:

Courts refuse to make any order securing the child’s relationship with the apart parent until the time of a so-called “final” hearing which, in most cases, is many, many months (and sometimes years) away.

After separation, children need, more than ever before, the security of knowing that

they are not going to lose either parent. They need the oxygen of “contact” with both their parents. Damage starts to be done the moment that they start to be starved of that oxygen. They wonder why their departed parent is not seeing them. They wonder if they’ve been abandoned by that parent.

These feelings can easily be fuelled by a de facto custodial parent who is hostile to the other parent. It is not difficult to turn the children against the apart parent.

Thus, many children become alienated from their apart parent (usually their father, but sometimes their mother). The apart parent appears to become irrelevant.

By the time the “final hearing” takes place, it’s all too late. Delay has determined the outcome, which is contrary to another core principle in the Children Act 1989 - that delay is prejudicial to the children’s welfare.

These dynamics are vividly demonstrated by the Munby Judgment referred to above. This scenario is all too typical in our experience. Where are the Government’s proposals for remedying this position?

The Solution – Equal Treatment is Best for Children

Where there is no genuine safety issue, both parents should be treated equally by the law, because that is the best approach for the children. An early order needs to be made to secure the children’s relationship with the parent who is being excluded.

Legal Presumption of Contact

There needs to be a legal presumption that all separated parents should have the automatic right to substantial parenting time with their children. Currently the law does not entitle a perfectly fit parent to any time whatever with their child. Meanwhile the other parent has all the time they want with the child, because “possession is nine-tenths of the law”. That parent is permitted to maintain total control over parenting, and they can use that control to block the other parent’s access and grandparents’ access.

The effect of the legal presumption would be that, when a parent applies to court (on the basis that his/her parenting time is being obstructed by the other parent) the court must make a PARENTING TIME ORDER to secure the child’s relationship with the applicant parent. Courts must be required to make such an order at the first hearing unless there is credible evidence that the applicant parent is a safety risk.

This legal presumption needs to be the core principle that guides the parents, judges, lawyers, mediators and everyone involved in the process.

A child’s right to an equal relationship with both parents should only be compromised where one parent poses a proven safety risk. All fit parents should be treated as equal parents in terms of all the rights and responsibilities of parenthood. This is the position when parents are still together. The State should not be discriminating against fit parents simply because they can no longer live

with their children on a daily basis. Self-evidently, such discrimination is contrary to the children's welfare needs.

Children

Children tell us that their parents' separation was a devastating experience that was made much worse when they were prevented from seeing their other parent. Children who were put in this position tell us they didn't dare admit that they wanted to see their departed parent. Nobody was prepared to help them. They were forced to suffer in silence while the courts and CAFCASS did nothing other than make matters worse.

How is it that the Government has missed this crucial point? Why does the Government want to keep suggesting that parents' interests and their children's interests are somehow at odds, when both parents are fit parents?

Alienation – an insidious form of emotional child abuse

The resident parent (who lives with the children constantly) can so easily block and frustrate the other parent's relationship with children in all sorts of ways – covert and overt. The resident parent is afforded ample opportunity to poison the children's minds against the non-resident parent – a process known as "alienation". Alienation is an insidious form of emotional abuse of children which should not be tolerated; yet our current system encourages it.

Alienated children will, in time, say on occasions that they don't want to see the alienated parent. It is difficult for children to assert their right to see their other parent in these circumstances. Neither should they have to. The resident parent, in these circumstances is abusing the human rights of the children and the other parent to have a family life with each other. This should not be permitted.

Government insistence on maintaining the status quo

In a civilized society, people who are having their human rights violated can only look to the courts to uphold them. No other lawful remedy exists. It is therefore essential that the courts should be armed with clear laws that can (and must) be swiftly applied and effectively enforced to protect the rights of children and excluded parents and grandparents to have a relationship.

In our meetings with Government Officials, they have agreed that the system is far from perfect and yet insist the current practice of Family Law is as good as it can be despite the abuse of the rights of children. This attitude can no longer be tolerated and we propose the following reforms.

SPECIFIC PROPOSALS FOR REFORM

The following reform proposals are based on years of researching Best Practice jurisdictions (particularly in the United States of America) which are at

least 20 years ahead of our (private law) family justice system. Their systems are not perfect, but they are all driven by the children's right to continue to be parented by their mother and father.

It is not necessary to re-invent the wheel. There is a wealth of experience and resources to draw upon from Best Practice jurisdictions.

Clear and Simple Rules are needed:

The UK's law in this area requires simplification and clarification. Clear rules will lead to better outcomes for children and families. They will also promote consistency without the need for the same judge to stay with every case – although that is still a desirable (if somewhat unrealistic) intention.

Our current system is characterized by unfettered discretion. This means that personal biases - of judges, CAFCASS staff and others involved in the system – take the place of clear rules. Therefore, going into a case, no parent or child knows where they stand. The law in this arena is a mess.

The Legal Presumption

As we have stated, the law needs to be clarified to expressly include the strong presumption that, beyond separation, both parents shall continue to have the right to substantial parenting time with their children, unless there is a genuine safety risk that is supported by credible evidence. This presumption must be applied by courts from day one.

Such a presumption exists in our public law. The Government have been unable to put forward any reason why it should not apply to private law cases.

The No Order Principle

This is a core defect in the current law. The very fact that the matter has had to come to court shows that an order is needed (and quickly) to secure the child's parenting time with the applicant parent. The no order principle must go – an order must be made at the first hearing securing the child's time with both parents.

Children & Financial Issues must go Hand in Glove

The Government believes that issues of money should be kept entirely separate from issues of parenting time. This is wholly unrealistic and contrary to the best interests of the children.

The money settlement should follow the best parenting plan; not the other way round. It is clearly wrong to make the parenting plan have to fit around whatever money decisions have already been made.

For example, both parents need to have a home that will accommodate the children during the periods when they are living with the other parent. Also, where there are still financial issues to be resolved; these can undermine any children's

arrangements that have been put in place. All areas of conflict need to be settled together on a basis that the children maintain their relationship with both parents.

Accordingly, money issues should never be finalized until the parenting plan is settled and embodied in a court order that should embrace all the arrangements – children's included. This is the norm in Best Practice jurisdictions

Joint Custody/Shared Residence

Parliament intended (via the Children Act 1989) that shared residence (i.e. joint custody) should be the common order.

Joint custody is, in essence, automatic throughout USA and in all Best Practice jurisdictions. It should be automatic here, unless a parent poses a proven safety risk, or unless a parent is failing to be supportive of the other parent's relationship with the children.

Making shared residence/joint custody the norm would remove the most emotionally-charged aspect of the proceedings, because neither parent would feel that they may lose their children. It is the best way of showing that both parents are regarded as having equal status in the eyes of the law. A major area of potential conflict is removed.

Now we are essentially down to a discussion over the apportionment of parenting time between two fit parents.

The Green Paper of 2004 stated:

“The Government believes that both parents have a responsibility to ensure their child has meaningful contact with the other parent.”

We wholeheartedly agree and we believe this parental obligation should be expressly enshrined in statute as a key factor to be taken into account by courts when considering whether there should be any departure from the norm of shared residence (i.e. joint custody).

A parent who cannot live up to this obligation is a threat to their children's welfare until that parent learns to support the other parent's role. Frustrating the other parent's parenting time should result in the perpetrator losing their equal parent status (i.e. their shared residence status) until they have mended their ways. In USA judges have found this to be an effective sanction.

Changing Expectations

Once these simple, commonsense ground rules are firmly in place, we believe that lawyers (and other practitioners) will start advising parents differently, and that this will lead to better (and earlier) out of court settlements for children.

It must become an embedded expectation that children should continue to be parented by both parents and that parents will be regarded as equal by our family

justice system, unless/until they are found to pose a proven safety risk.

In USA, stronger shared parenting laws have led to less divorce because parents know that they are not going to be able to simply erase the other parent any more; so there is less reason to seek a divorce.

Public Funding

Public funding of legal costs should only be available to parents with cases that have merit in the context of this legal presumption of parental equality. So, for example, parents who simply want to block the other parent's relationship with the children (in the absence of credible evidence of a genuine safety risk) should no longer be given public funding – except in relation to mediation, which should be mandatory in all such cases.

Parent Education

Lawyers, courts, mediators, etc. should provide (routinely and at the first opportunity) Parent Education Packs that explain the court's expectations and ground rules. The information provided should stress the importance of parents conducting themselves in ways that minimize the harmful effects of their separation on their children.

These educational materials should emphasize that the other parent's reasonable parenting time must be supported and never blocked or frustrated, unless there is credible evidence of a genuine safety risk. The materials should contain clear information about the court's attitude to non-cooperating parents and the sort of sanctions that might be applied in order to safeguard the children's right to a continuing relationship with both parents.

CAFCASS

CAFCASS has been in chaos since its inception. It frequently creates more problems than it solves. The preponderant culture of the organization is one that promotes conflict and is the kiss of death to the introduction of effective reforms that will lead to what the Government says it wants to achieve.

CAFCASS has been guilty of gross negligent in too many private law cases. The Select Committee was severely critical of CAFCASS. We have seen no improvement, at operations level, in the way CAFCASS approaches private law cases.

Under the chairmanship of the well-intentioned Anthony Hewson, OBE, we had hoped that CAFCASS could be reformed. Ultimately, Mr Hewson had to admit defeat and resign. Old attitudes within CAFCASS were simply too deeply entrenched.

Senior CAFCASS staff worked behind Mr Hewson's back to undermine all his endeavours to reform the organization. They made it impossible for him to live up to the assurances he had given to Coalition members and other parenting

organizations. These Luddites remain firmly at the helm of CAFCASS's day-to-day operations. Whilst there are a small number of well-motivated officers within CAFCASS, the majority of officers are chronically resistant to systemic changes that are required.

CAFCASS, certainly in its present form, must be scrapped and replaced with a new agency tasked with child protection in cases where there are genuine issues of child safety that require investigation. As to ordinary cases, in place of CAFCASS, each family court must have direct access to local family law mediators. The mediation providers must be trained professionals skilled in proven "Alternative Dispute Resolution" techniques. We repeat our firm view that children and financial issues should be mediated on a global basis. Mediators agree with us.

It would be entirely the wrong approach, in our view, to try to re-task CAFCASS to fulfil this crucial role.

Family Law Reform Revised Procedure

Application for Parenting Time

If a parent's access to the children is being frustrated they need to make a Parenting Time Application to court. Courts should be instructed that this is a serious, urgent signal that children's welfare needs are at risk. Delays must not be allowed to occur.

The Parenting Time Application should be served

This should be served on the respondent parent together with a Parent Education Pack. It should set out essential details, including:

How the parenting time is currently apportioned and why;

The specific, detailed parenting plan proposed by the applicant parent;

The reasons for the application.

The Reply from the respondent parent

The respondent parent should be required to set out (file and serve) written reasons for resisting the application

their alternative proposed parenting plan within 5 days

The First Hearing

On receipt of the Reply the court should schedule a hearing to take place within 14 days. The importance of an effectively managed first hearing cannot be over-emphasized.

If there is not a genuine safety reason (supported by credible evidence) for

restricting the applicant parent's relationship, the judge must, in the best interests of the children, be required to order substantial Parenting Time. Substantial means not less than 30% of the available time for parenting.

The Good Reason Principle

The only acceptable basis for not making a substantial Parenting Time order would be a "good reason", meaning a reason that genuinely includes safety and is supported by credible evidence.

Simple Cases (no safety issue supported by credible evidence)

In those cases (the majority) where the judge will not be presented with any good reason (as defined above) the court must make a Temporary Parenting Time Order pending an overall resolution. The ordered parenting time should be between 30 and 50% of the available time (unless the applicant is seeking less time). No restrictions should be placed on how the parenting time is spent where there is no genuine safety issue that is supported by credible evidence.

The judge should also order the parents into mandatory parent education and mediation – both to be completed within the next 21 days – see ADR phase below.

A second hearing date should be fixed to take place in 30 days' time. It is vital that the court should retain firm control over the timetable.

The judge should make clear to the parents:

The court's expectation that, with the help of the mediator, during the ADR phase (see below), an overall agreement (children and finances) will be reached which can then be embodied in a consent order on or before the second hearing date; that, in the absence of a mediated agreement, the court will impose an overall arrangement, including a detailed parenting plan, at the second hearing designed to secure the children's relationship with both parents.

The court will not look favourably on either party seeking unreasonably to restrict the other's parenting role; and pending the overall resolution, the court expects the Temporary Parenting Time Order to be adhered to failing which there will be sanctions.

ALTERNATIVE DISPUTE RESOLUTION (ADR) PHASE:

First Step: Parent Education

Both parents should undergo a parent education course and mandatory mediation sessions within 21 days. The costs of these interventions should be borne equally by the parents unless either parent qualifies for public funding.

Second Step: Helping the Parents Resolve all Issues:

Mediators/Alternative Dispute Resolution Providers:

The court should provide a list of local, approved mediation providers from which the parties must choose an agreed provider within 7 days.

Good mediation services are available across the country. The list should include a choice of different mediation providers – drawn from both the for-profit and non-profit sectors – so that the parties can choose the best provider for their case.

We do not yet have parent education providers across UK. It may be that mediation providers could take on this task too, although we believe the two functions – which are different - should be undertaken by separate people. Live parent education classes are undoubtedly more effective, but, in the early stages, this education may have to be delivered via written materials supplemented by video/audio tapes.

There are extremely good (tried and tested) parent education resources across the USA that can be culturally adapted for UK use.

Good lawyers will support this new approach

It has been put to us that lawyers will resist the shift towards mediation on the basis that they will lose revenue. Our research in the USA has indicated that lawyers embrace mediation. It does not mean that lawyers are excluded. They are very often involved in the mediation process to good effect. Good family lawyers genuinely want what is best for the children and the family as a whole. Cases get settled more quickly; more cases can be handled at the same time; fees get paid more quickly; client satisfaction and the lawyers' own job satisfaction are improved.

The Second Hearing

In cases where the ADR has been successful:

Before or at this second hearing a comprehensive consent order will be made to underpin the mediated settlement.

In cases where the ADR phase has failed:

In these cases the judge must grasp the nettle and impose a comprehensive order that secures for the children substantial parenting time with both parents.

Complex Cases (credible evidence exists of a safety issue):

Where the court finds at the first hearing credible evidence that the applicant parent poses a safety risk, the judge must be required to give written reasons (in the form of a written judgment identifying the evidence relied upon) for refusing to make an immediate parenting time order, or for placing restrictions on the ordered parenting

time; or for limiting it to below the 30% minimum threshold.

The restrictions/limitations placed on parenting time must be fully explained in judgment and they must be proportional to the safety risk.

For example, the judge might conclude that the ordered parenting time must be supervised in a contact centre. The Judgment would fully explain the reasons for this.

At the same time, the court should order an urgent investigation of the perceived safety risk which should be conducted within the criminal justice system to the criminal standard of proof. The criminal court's ruling should be binding on the family court.

The children should be separately represented in these cases.

If the allegations are true, obviously, the children will need protection. Equally, if they are false, the children's right to parenting time with the falsely accused parent must be protected.

False allegations are extremely damaging to the accused parent and to the children. Where they are found to have been malignly motivated, the accuser should face severe sanctions proportional to the harm caused. For example they may have to lose their equal parental status (signified by shared residence) temporarily or permanently.

Enforcement

Parenting Time Orders must be enforced swiftly and with determination. It is patently not in their best interests for children to be denied ordered parenting time with a fit parent. It is a hopeless approach for courts to dilute the order when faced with a recalcitrant parent. Instead adequate sanctions must be applied promptly to coerce non-complying parents into mending their ways.

In some parts of USA, a system has been put in place whereby a court official will phone a parent (on the complaint of the other that ordered parenting time was denied) for an explanation. This simple measure has had a big, positive impact on compliance.

Where parenting time has been lost, a "make-up order" should be made to enable the lost time to be made-up. Costs and damages should be awarded against the non-complying parent where there is no reasonable excuse for the non-compliance.

In hardcore cases, USA judges have found that transferring custody away from the offending parent in favour of the other parent is usually effective. This could be done on a temporary basis (to allow the parent an opportunity to start complying) or on a permanent basis.

Where shared residence had been the order (as should normally be the case as

Parliament intended) this would mean demoting one parent to the status of a “contact parent”. We note that Mrs Justice Bracewell (who has had the benefit of exposure to the practices in Best Practice jurisdictions in recent years) on 20 May 2004 applied the sanction of residence transfer against an obstructive parent.

For other extreme cases (where parents go on ignoring the court’s orders) it may be necessary to impose a period of imprisonment. USA judges have found that often the threat (that this will be the next step) will be enough. Sometimes it might be necessary to put the offending parent in a cell until they are ready to (a) purge their contempt by apologizing to the court and (b) give an Undertaking to comply in future. An hour or two in a cell can be sufficient.

The State imprisons parents who allow their children to play truant from school. There is no reason for not taking the same line here. It would have a salutary effect on others who think they can ignore court orders with impunity.

It is a worrying aspect of the Government’s proposals that they seem to believe that courts have to be kept out of the process.

Whilst we warmly welcome a shift away from adversarial court proceedings in favour of mediation/ADR, it would be a big error to miss the fact that the authority of the courts needs to be ever-present in the background to drive early resolutions that promote the children’s welfare needs.

It is the fact that the court looms ever-present in the background that drives parties to settle their disputes outside court (via ADR or negotiation) in civil litigation. Avoiding the looming trial is a big motivator for settlement in civil cases. The court’s role is even more important in children cases where the judge fulfils the role of “super parent”.

However, this motivating-aspect of the court only works when the law is clear, balanced, and outcomes can be reasonably predicted.

NB These proposals fall in line with those drawn up in October 2004 by the Coalition of Equal Parenting of which The ManKind Initiative is a leading member.

Appendix

Copy of letter to Rosie Winterton re Legal Presumption of Contact

Rosie Winterton MP
Parliamentary Secretary
Lord Chancellor’s Department
Southside, 105 Victoria Street
London, SW1E 6QT

7th.April 2003

Dear Minister

Legal Presumption of Contact

As you are aware, Tony Coe, President of the EPC, has withdrawn from any further discussions with your department with regard to issues of contact.

I do not need to repeat the reasons for his withdrawal, as they have been outlined in detail in his letter of 27th.March 2003.

The Coalition, of which the EPC is still a constituent member, now has to consider its position on the matter of its continued discussions with your department, which commenced in late 2001. Throughout this time we have patiently outlined our proposals, culminating in the Shared Parenting Policy document which was given to you in December 2002.

At this time you undertook to give our proposals serious consideration and stated that you would comment on them section by section. It was also our clear understanding that there would be a series of meetings with your team to discuss our proposals with the possibility of reaching a consensus. Finally, that there would be a meeting with yourself to discuss proposals of implementing a pilot project.

To date, you have failed to give us a detailed response, nor has there been any suggestion of further meetings with your team. Our concerns now focus on the comments made by Sally Field that "The Government does not believe that a legal presumption of contact would be helpful". In your letter to Tony Coe you comment that "There may be cases where contact is not in the child's best interests, for example where there has been abuse or violence".

In making these comments, you have revealed that you have neither read nor comprehended the essence of our proposals. We have continuously stated that our proposals relate to fit parents and that furthermore, we require a robust approach to allegations of abuse or violence. Current practice in the Family Courts with regard to such allegations is abysmal, resulting in cases of fit parents having to undergo years of litigation with the health of their children being seriously damaged in the process.

In the last year we have had cases where non-resident parents who have been denied contact with their children because of deeply flawed Family Court practices have been re-united with their children by the simple expedient of children voting with their feet. Suddenly, a parent who was deemed unfit by the doubtful practices of the Family Courts, was transformed overnight into a suitable parent.

I will cite four cases :

NB The original names and addresses included in the letter have been omitted for the purposes of confidentiality, but can be drawn upon in the event of oral testimony.

Mr. A

Over a period of nine years he attended 130 hearings at the cost of £500,000 worth of legal aid. He was imprisoned twice through breaking injunctions (once for

waving to his children and a second time for speaking to them in a car park). He was subjected to a no contact order and was only allowed to send birthday cards and Christmas cards, which had to be vetted.

In a single three minute phone call from his eldest daughter informing him that she and her youngest sister intended to live with him, the entire nine years of persecution was overturned and within three days he obtained a residence order for his two daughters. Overnight he became a suitable parent.

Mr. B

Over a period of 3-4 years, 10 hearings and a legal aid bill of around £40,000, his two children were denied access to him, first by the mother and then by the courts.

Once again, his children voted with their feet until the mother threw them out and overnight he was transformed into a fit parent. Unfortunately, they could not return to the family home as possession had been given to the mother and they now live in a rundown council estate with their father.

Mr.C

Over a period of eight years his family have suffered abuse from all agents of the state ranging from Social Services, Probation Service, Police, Court Welfare Service and the Family Courts. Over a year ago, first one daughter and then the second daughter simply moved in with him. Even now he and his daughters are being subjected to further abuse by these services that appear to be unable to accept that the girls wish to live with their father.

Mr. D

His children have been through the Family Court system with its inability to listen to children. His 14 year old son voted with his feet within weeks of a residence order being granted to the mother and is now living with his father.

We are all aware of the fact that there are complex cases, which cannot be dealt with easily. However, none of the above cases involved "abuse or violence" and the underlying principle should have been that all non-resident parents should have a legal presumption of contact, which does not take 9 years to achieve.

Throughout our campaign for the right to see both parents, we have been heavily criticised by other organisations (including Fathers4Justice and DADS who have now left the Coalition) for concentrating on our methods of debate and legal demonstrations. Despite this we have continued on this course and will continue to do so, albeit by other avenues including legal and political processes.

We are, however, concerned that your perceived inaction will result in an increasing amount of unlawful demonstrations by other organisations or individuals which will do nothing to support our cause. I urgently request that we receive a more positive response than we have received to date.

In summary, I am asking on behalf of the Coalition, that you support the principle of a legal presumption of contact unless there are proven reasons that this should not take place eg. proven abuse or violence.

On receipt of your reply, this will be passed to all members of the coalition for their consideration. I look forward to your reply.

Yours sincerely

Stephen Fitzgerald (Co-ordinator for the Coalition of Equal Parenting)

Rosie Winterton's reply on 14th. May merely confirmed that "the Government cannot accept the proposal of a legal presumption of contact. I confirm that there are no plans to change current legislation, ie, The Children Act 1989."

Subsequent meetings with Margaret Hodge and Lord Filkin drew a similar response.

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