

## Standing Committee B

The Committee consisted of the following Members:

*Chairmen:*

†Mr. Mike Hancock, Mr. Jimmy Hood

†Brooke, Annette (*Mid-Dorset and North Poole*) (LD)  
†Cawsey, Mr. Ian (*Brigg and Goole*) (Lab)  
†Coffey, Ann (*Stockport*) (Lab)  
†Eagle, Maria (*Parliamentary Under-Secretary of State for Education and Skills*)  
†Evennett, Mr. David (*Bexleyheath and Crayford*) (Con)  
†Grogan, Mr. John (*Selby*) (Lab)  
†Hughes, Beverley (*Minister for Children and Families*)  
†Jackson, Mr. Stewart (*Peterborough*) (Con)  
†Johnson, Ms Diana R. (*Kingston upon Hull, North*) (Lab)  
†Keeble, Ms Sally (*Northampton, North*) (Lab)  
†Kidney, Mr. David (*Stafford*) (Lab)  
†Loughton, Tim (*East Worthing and Shoreham*) (Con)  
†Miller, Mrs. Maria (*Basingstoke*) (Con)  
†Moran, Margaret (*Luton, South*) (Lab)  
†Russell, Christine (*City of Chester*) (Lab)  
†Williams, Mark (*Ceredigion*) (LD)  
†Wright, Jeremy (*Rugby and Kenilworth*) (Con)  
Emily Commander, *Committee Clerk*

† attended the Committee

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**Tuesday 14 March 2006  
(Afternoon)**

**[Mr. Mike Hancock in the Chair]**

**[Children and Adoption Bill \[Lords\]](#)**

**Clause 1**

Contact activity directions and conditions

**Tim Loughton** (East Worthing and Shoreham) (Con): I beg to move amendment No. 46, in clause 1, page 1, line 15, leave out

‘promotes contact with the child concerned’

and insert

‘directly promotes reasonable contact with the child concerned by negating or managing a specific shortcoming on the part of the person directed to attend the activity in the circumstances where this shortcoming—

(a) has been identified by the court in a finding of fact after due legal process, or

(b) is stated by the court to constitute a specific and significant impediment to a higher level of contact that might otherwise be ordered by the court.’

**The Chairman:** With this it will be convenient to discuss amendment No. 2, in clause 1, page 4, line 4, at end insert—

‘( ) Before making such an order, the court must consider the time by when the specified contact activity can be provided by the person proposed as the provider and shall specify the period over which the contact activity is to be provided.’

**Tim Loughton:** Welcome to the Chair, Mr. Hancock. I hope that our deliberations will be as amenable as they were this morning under the chairmanship of Mr. Hood, if perhaps not quite so strict.

The major part of the Bill deals with child contact. As I said to Mr. Hood this morning, a lot of general principle is involved with those provisions. Without wishing to criticise the Chairman’s selection of amendments, I have to say that the way in which they have been ordered results in the lead amendments to clause 1 dwelling on relatively ancillary matters. When it comes to later parts, especially clause 4 to which we have tabled many amendments that go to the heart of the Bill, you will perhaps allow us to talk more about general principles, Mr. Hancock, when presumption and reasonable contact needs to be aired more fully.

Amendment No. 46 would change the wording of subsection (3), which refers to the promotion of contact with the child and the nature of the contact activity directions that the Bill enables the court to give. The amendment and the clause make provision for the courts to make contact orders for contact activity directions, such as programme classes, counselling or guidance sessions, to promote better understanding between the parents involved to go forward for a formal contact arrangement with the

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children. We are in favour of that general principle. We must all agree that we need to pursue anything that will avoid long drawn-out, acrimonious legal wrangles between separating partners, which often result in their children being used as pawns.

However, if, as part of that exercise, a court directs that parents should attend a certain course in order to deal with some of the problems that may have given rise to the acrimoniousness of a relationship, it is absolutely essential that the course is relevant and appropriate. As someone said, it is no good instructing a non-resident parent to attend a course that will teach him or her how to change nappies better if

nappy-changing was not the fundamental problem between the two parents and the children.

Similarly, if the court directs that a parent or parents need to take certain action, the course must address all the outstanding problems. We do not want a parent to get help for a particular problem, only to be then told that there is another problem, as a result of which the whole thing drags on. That is often a criticism of such courses. All the time that the prearrangement settlement is going on, a non-resident parent loses contact with the children, and the relationship is gradually diluted. It becomes a Catch-22 situation, so that when the parents have supposedly addressed all the outstanding problems that they may have, they find themselves remote from the children to whom they are desperately trying to become closer.

The amendment says that a direction the court gives must be relevant and pertinent to the problem that the court and its officers have identified, and that it should be based on fact. It should not be based only on an accusation—without any facts—that a husband or wife has, for example, an anger problem or a tendency to violence, because we all know that when relationships go wrong accusations can flow thick and fast.

On other parts of the Bill, we will push the case that people are innocent until proven guilty, and if accusations are made about a partner's behaviour, they should, when possible, be backed up. I know that there are difficulties with domestic violence issues—we shall come to them in a later clause—but such claims should be substantiated. They should be backed up with research by the court officers so that the court is apprised of the facts—or should get as close as it can to them—when it makes its direction.

The amendment would insert the phrase “reasonable contact”, and we shall keep coming back to that because it is fundamental to the Opposition case. There is a claim that courts currently act on a presumption of contact, and we want that to be apparent in the Bill, but a presumption of contact in principle is different from one in practice. More significant is the point that contact should be reasonable, because contact could amount to an exchange of Christmas or birthday cards, or seeing a separated child for one afternoon every month or every three months.

Each case is unique, but in many cases such limited contact cannot possibly be construed as reasonable on any justifiable definition. As I shall argue in more

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detail in relation to other amendments, we want the Bill to be worded to achieve reasonable contact for non-resident parents unless there is, for want of a better phrase, a clear and present threat to the safety or welfare of the child. Welfare is paramount, and we have no disagreement with the Government on that. Everything must distil down to the safety and protection of the child and what is in the child's best interests. On that we are at one with everyone who has an interest in the Bill.

As well as the requirement of reasonable contact, the amendment seeks a factual finding by the court on the problems that are required to be addressed. Paragraph (b) would require that what

“is stated by the court”—

must—

“constitute a specific and significant impediment to a higher level of contact”.

That is all about relevancy and pertinence. We need to make sure that the findings of the court are appropriate to the parents being dealt with and to their children.

**Mr. David Kidney** (Stafford) (Lab): In quoting the amendment the hon. Gentleman omits the phrase

“managing a specific shortcoming on the part of the person directed to attend the activity”.

Would not that undesirably narrow the clause, which is commendably open? What if the need for a contact activity results, not from a specific shortcoming, but from a long break and the need for a gentle restart to contact?

**Tim Loughton:** That would surely have resulted from an identified shortcoming or from a shortcoming in the form of indifference on the part of the separated parent. Either way, the reason a parent petitions the court to have greater contact with his or her children will arise as a result of his or her having been prevented by determinations for contact in the past from having the degree of contact that he or she now seeks, because claims were made about safety or welfare considerations, or else the parent has been prevented for not having come up to scratch for other reasons that have now been addressed. The parent may have been a threat to the child, or have had physical and emotional problems that were deemed to be a threat to the child, but that have been addressed, which is good. Our amendment seeks to identify the problems that prevent a parent from having fuller contact with his or her children, whether they be allegations from the other parent that must be justified, or shortcomings on his or her own account, which may be addressed through medical, psychological, financial or whatever help or support.

We are not skirting the issue. The amendment is all about ensuring that if a court makes a direction, it is relevant and deals with the reason why sufficient contact was not granted. That is why we use “negating”—getting around something or controlling a specific shortcoming. The amendment sets out the provision more clearly than the rather woolly clause does.

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**Jeremy Wright** (Rugby and Kenilworth) (Con): Does my hon. Friend agree that in the example given by the hon. Member for Stafford (Mr. Kidney), the issue for the court would not necessarily be whether there had been a long gap in contact between the relevant parent and the child, but whether that gap had caused a difficulty with contact that needed to be remedied? In that context, “shortcoming” is designed not to criticise the parent in question, but to try to deal with a problem that the court has identified.

**Tim Loughton:** Absolutely. That is why I said there was a Catch-22 situation. The longer a non-resident parent is alienated from his or her children, the bigger the problem and challenge of getting them back together. If the parent has been away from the child for 12 months or more for reasons out of his or her control—perhaps because of false or over-egged allegations, the court system has been too drawn out, and they have drifted away from their children during that time—it does not mean that they are any less deserving of getting back together and establishing more regular contact. It does not diminish their desire and entitlement. I do not want to talk about

the rights of parents, however, as we are concerned only with the rights of children. The rights of the children to maximise their time and social interaction with both parents have driven them away.

Contrary to what the hon. Member for Stafford said, as my hon. Friend the Member for Rugby and Kenilworth (Jeremy Wright) pointed out, drafting the amendment in terms of negating or managing a specific shortcoming is right. It allows all potential problems to be actively or passively addressed.

**4.15 pm**

**Ann Coffey** (Stockport) (Lab): My difficulty with the court's identifying a specific shortcoming is that generally the inability of both parents to agree with and abide by a contact arrangement probably has something to do with the nature of the breakdown of their relationship, their feelings about each other and various other factors. It would be difficult to identify a specific shortcoming within all that. Given that there is often a generality of factors, it would be much better to let the court decide what generality of contact activity might be used to address the problem. For example, if the parents cannot see beyond their own needs to those of the child, then sending them to parenting guidance classes and the like gives the court discretion to deal with the generality of the problem. Perhaps the amendment would tie down the court too much to identifying something that cannot be identified so specifically.

**The Chairman:** That got very close to being a speech, rather than an intervention.

**Tim Loughton:** It was a very good intervention, though, to be generous to the hon. Lady. I understand her point, but in keeping with the generality, we risk directing parents to seek guidance, assistance, counselling or whatever for things that bypass

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fundamental problems, which may be why they were accused by one partner of not having proper contact with their children before the split happened.

The new favourite television programme of those of us who have taken an interest in this Bill, and everyone I have met as I have been briefed on the Bill, is all about divorce and shows late at night. A rather interesting child psychologist visits two warring parents to try to mediate between them. In the few moments I have had away from trying to study the Bill and cram on it, I have seen a couple of the programmes, which were absolutely fascinating. I saw one last week, or the week before, where a couple had split very acrimoniously. One criticism of the husband, who became the non-resident parent, was that he spent all his time watching football on television or going to football matches and was therefore not spending quality time with his children. He thought, as a treat, that he would take his children around Toys R Us where he was keen to buy them toys, and board games in particular, so that he could go home, play games with them and spend some quality time. The trouble was that he was trying to impose what he wanted to do by choosing board games that he was interested in, which usually had a football theme, but his two daughters did not have an awful lot of interest in that.

That man was trying to do the right thing for his children but was actually doing what he wanted to do, rather than what they wanted. The whole thing was quite fascinating. He had to go through a catharsis: he had to put football on one side and do things that put his children first and that his children really wanted to do. The quality time he was then able to spend was far more beneficial and enjoyed more by the children, so

it was beneficial for all involved. It was quite interesting to see that happen in a media, “Big Brother” sort of a way.

The point of that example is that there was a specific shortcoming; the man was thinking within his own mindset rather than in those of his children as he tried to improve the quality of the relationship between them. We have probably all been guilty of that. There are those of us who try to take our children to political meetings or political coffee mornings on the basis that we are spending time with them, but are nine-year-olds really all that interested in drawing the raffle at the blue-rinse brigade’s latest event?

We have to consider such problems in our work-life balance, to use the topical phrase, which is why “specific shortcomings” can address such things. It can be suggested that parents should get assistance to enable them to see their children’s needs through their children’s eyes, rather than their own, which are slightly skewed. That applies only to a small number of parents, perhaps, and it is horses for courses: everyone is unique. However, it is an example of where the wording of the amendment would be more appropriate.

**Mr. Kidney:** I thought that the panoply of things suggested here would not be necessary in a case in which there had been no contact for a while. An

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absolutely faultless reason might be shown in the example of man in the armed forces who has been away, has come back and now has no contact. I would not have thought the amendment was necessary, even in the case of the hon. Gentleman’s example. Is he saying that a court would have to hold a hearing to find as a matter of fact that the man was too obsessed with his own need for football, and that that would constitute a “specific and significant impediment”, before he could even go on a contact activity directed by the court?

**Tim Loughton:** It is all part of the same thing. Somebody must first come to terms with the problem. The court must recognise the problem, suggest an activity specifically aimed at addressing the shortcoming or negating something counter-productive to the relationship with the child, and then come up with a relevant solution.

I judge that the aims of the hon. Gentleman, the hon. Member for Stockport (Ann Coffey) and myself are the same. Amendment No. 46 is relevant. Practical problems arise when people go to the court system and are then directed to do some activity that sounds very fluffy and nice but is entirely irrelevant to the problem underlying the lack of connectivity between a non-resident parent and his or her children. The amendment asks only for relevance and pertinence to the real problem. A non-resident parent can go on all sorts of courses and come back as the perfect nappy changer or practitioner of the game of Kerplunk! or of netball, but if his or her children hate netball, have never been near a Kerplunk! set and are far too old to be in nappies, it is all rather useless. I have given rather extreme examples, but that is the point that amendment No. 46 seeks to address.

Amendment No. 2 is not greatly linked to amendment No. 46, but in your great wisdom, Mr. Hancock, you have put them together. We respect, revere and bow down before that great wisdom, as we have done with the order of the rest of the amendments, because the debate is all about the problem of long drawn-out court processes.

The amendment was pushed in another place, and the Law Society is particularly keen on it because its purpose is to prevent court directions from causing further delay to the resolution of a process. We shall come to the issue later in clauses dealing more directly with the Children and Family Court Advisory and Support Service, the availability of support services and so on. If the legislation is to work, adequate resources are needed and a framework of a range of contact activity services must be provided across the country, so that children and their parents can benefit from them.

There is an acknowledged need for better facilitation of contact orders. As the Law Society puts it:

“There is no point directing a parent to undertake a parenting programme designed to address intractable contact disputes, or a domestic violence perpetrator programme, if the facility is not available locally, affordable and accessible . . . the court should be required to consider the time by when a contact activity can be provided and whether it can be provided over the likely appropriate period of time in respect of the family concerned.”

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If it cannot, meaning that the whole process is delayed by the wait for somebody to access a programme that has a very long waiting list or is not available locally, the relationship between the non-resident parent and his or her children could deteriorate during the time when proper contact is not operating, and we could get into a Catch-22 situation.

**Mr. Kidney:** This time, I very much support the hon. Gentleman. He may have seen that I tabled a similar amendment, although it was too late for today and is starred. We both want the judge to specify a start date as well as directing what the activity is, who will provide it and where it will take place. It may be too restrictive to say that the judge should specify an end date, but there should certainly be a review date to see how things are getting on.

**Tim Loughton:** I completely agree. One does not want to be too prescriptive, but if parents are given a direction, they should be able to expect recourse to the solution to be available and that it can be completed in as short a time as possible, for the reasons that I mentioned.

I entirely agree with the hon. Gentleman's sentiments about wanting to set a start date and a completion date, and in an ideal world that would be right. The trouble is that there is an enormous shortage, and part of the problem with the subject of the Bill is that we can legislate until the cows come home and put into force all sorts of structures that make the system fairer and more accessible before the matter gets to an acrimonious lawyer-versus-lawyer situation, but if the support services—mediation, parenting programmes and so on—are not available, it will all come to nothing. If it takes even longer because a judge has directed that action can be pursued only after A, B and C have been completed and they are not available it will make the situation worse all round, partly because of the shortcomings of the resources at the disposal of CAFCASS, the mediation services and so on, which we will discuss later in more detail.

When the amendment was discussed in another place, Lord Adonis retorted that the

Government had set aside £7.5 million for child contact services for developing and piloting a range of contact activities. But that money has also been earmarked for improving and upgrading centres for supervised contact, which are in a pretty shoddy state, and some of them are in depressing, anonymous places. The Government rightly have ambitious plans to incorporate some of the supervised contact facilities in family centres and other, more family-friendly places throughout the country, but £7.5 million will not go far if the clause is to achieve everything that the Government want.

**Mr. Stewart Jackson** (Peterborough) (Con): It is a pleasure to serve under your chairmanship, Mr. Hancock.

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Does my hon. Friend agree that in respect of CAFCASS the amendment would impose the imperative of uniformity and access to resources throughout the country which would not exist without the proposal?

**Tim Loughton:** My hon. Friend the Member for Peterborough (Mr. Jackson) is no longer a virgin, which will not mean much to you, perhaps, Mr. Hancock. He makes the very good point that there is presently a postcode lottery in respect of access to court services and the availability of CAFCASS. One has only to talk to the management of CAFCASS to understand that problem. My hon. Friends and I have been visiting CAFCASS centres around the country, and we have been directed towards CAFCASS centres that are rather good and others that, for whatever reason, are less good. We have seen those that are better resourced than others and those with a shortage of staff available to cope with the challenges presented to them.

Thus, there is a problem: the Bill suggests how the courts might do their job better, but that will come to nothing if the workers at the coalface are not available in the support services to enable the proposals to come to fruition.

### **4.30 pm**

The amendment would give a clear steer in the Bill that courts need, above everything, to be mindful that speeding things up should not lead to an inferior service. Whatever directions they make and whatever activities it is deemed the parents need to carry out, they should be available, do-able, practical and relevant, because if they are not, and if their completion is a condition of progressing further in the court process—we should remember that there are waiting lists—then the problem will be protracted. The problem of lack of integration between non-resident parent and the children will be exacerbated, which is counter-productive to everything that we are trying to achieve.

I commend both amendments. Amendment No. 46 would define more clearly the court's priorities in determining what contact activities should be promoted. Amendment No. 2 would ensure that speed, accessibility and availability of those services should be of the essence before the directions are determined. As such, both amendments are helpful and seek to speed up what the Government are trying to achieve.

**Annette Brooke** (Mid-Dorset and North Poole) (LD): From the Liberal Democrat

Benches I also welcome you to the Chair, Mr. Hancock.

There is a link at least between the principles behind the two amendments, in that we would obviously want a contact activity to be relevant to whatever it is meant to address. We would expect some analysis in the court system; we would want the contact activity to be not only relevant but efficient and to work so as to achieve its objective; and we would definitely want the activity to be available, as amendment No. 2 states.

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I have a great deal of sympathy with amendment No. 2, in as far as there will be a huge blockage in the system if people are referred to particular contact activities but, lo and behold, they are not available. They might then be sent on an inferior substitute. Availability is crucial. It is a question of resources, although it also involves much training of the people who are to run the courses. I would be particularly concerned about the availability of the domestic violence perpetrator programmes, which are incredibly important. They are being developed across the country, but I am sure that there is a lot more to be done. It might come as no great surprise but, with the refocusing of funds for adult education, courses to train counsellors in my area have been cancelled. That is a major impediment. I fear that other training to prepare people to give such courses might have been cancelled with the change in focus.

Amendment No. 2 is important because it refocuses on the necessity for ready availability, affordability and accessibility, to which the Law Society refers in its briefing. Obviously, provision has to be within easy access. I often mention my own county of Dorset, where one can forget getting somewhere by public transport. Such provision really has to be made within reasonable distance.

I have sympathy with the principles behind amendment No. 46 and with the point that we need direction to a relevant contact activity, but I am not yet at all convinced that the amendment would add clarity to the fairly simple statement in the Bill, which can sometimes be a better approach. So I shall wait to hear what the Minister has to say before making a final judgment about amendment No. 46, although I am certainly very supportive of amendment No. 2.