

Standing Committee B

The Committee consisted of the following Members:

Chairmen:

Mr. Jimmy Hood, †

Mr. Mike Hancock

†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**

Column Number: 111

Thursday 16 March 2006
(Afternoon)

[Mr. Mike Hancock in the Chair]

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

Clause 4

Enforcement orders

Amendment proposed [this day]: No. 49, in page 7, line 25, at end insert—

‘(4A) When considering whether to make an enforcement order, the Court shall have regard to the principle that, subject to the welfare of the child, the court acts on the presumption that a child’s welfare is best served through reasonable contact with both his parents unless good reason to the contrary is shown.’—[Tim Loughton.]

1 pm

Question again proposed, That the amendment be made.

The Chairman: I remind the Committee that with this we are discussing the following:

New clause 8—*Presumption in favour of co-parenting*—

‘After section 1(1) of the Children Act 1989 (c. 41) insert—

“(1A) In respect of subsection (1)(a) the court shall, unless a contrary reason be shown, act on the presumption that a child’s welfare is best served through residence with his parents and, if his parents are not living together, through residence with one of them and through both of them being as fully and equally involved in his parenting as possible.”.

New clause 11—*Reasonable contact*—

‘In section 8(1) of the Children Act 1989 (c. 41), for the definition of “a contact order”, substitute—

““a contact order” means an order requiring the person with whom a child lives, or is to live, to have reasonable contact with the person named in the order in the absence of good reason to the contrary and subject to section 1(1A) of this Act.”.

New clause 12—*Reasonable contact: no order principle*—

‘After section 1(5) of the Children Act 1989 (c. 41) insert—

“(6) The “no order” principle in section 1(5) shall be construed subject to section 1(1A) of this Act whereby it shall be presumed that making an order for reasonable contact with the parents is, in the absence of good reason to the contrary, better for the child than making no order at all.”.

New clause 18—*Provision as to family assistance orders*—

‘In the circumstances where a family assistance order is made, the officer concerned will proceed on the presumption that the child’s interests are best served through reasonable contact with both his parents unless good reason to the contrary is shown.’.

New clause 19—*Presumption of reasonable contact*—

‘After section 1(1) of the Children Act 1989 (c. 41) insert—

“(1A) In respect of subsection 1(1) above and subject to the welfare of the child, the court shall act on the presumption that the child’s interest

are best served through reasonable contact with both his parents in the absence of good reason to the contrary.”’.

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New clause 20—Reasonable contact: welfare checklist—

‘After section 1(3)(g) of the Children Act 1989 (c. 41) insert— “(h) the desirability of reasonable contact between the child and the non-resident parent in the absence of good reason to the contrary.”’.

The Minister for Children and Families (Beverley Hughes): As I was saying, all these amendments attempt in one way or another to introduce the concept of reasonable contact in various parts of the Children Act 1989 and the Bill. The hon. Member for East Worthing and Shoreham (Tim Loughton) had been arguing that the Government’s analysis is flawed and that the real issue underpinning all of the amendments is that the courts need to award more contact. I was attempting to point out that his analysis is flawed.

The evidence we have is not that the courts do not order sufficient contact in the first place, but that parents are seeking to address the failure of one parent to comply with the contact order that has been issued. The Government have introduced the enforcement measures in the Bill because of evidence that that is where the main problems lie. I do not agree with the hon. Gentleman’s analysis and therefore I do not agree that the measures he suggests address what the evidence suggests is the main problem. Moreover, his proposals would have consequences that we could not support. I have two concerns, which other hon. Members raised on Second Reading.

First, a presumption in statute can be rebutted only in exceptional circumstances. The courts would need strong evidence before deciding not to order contact. Ongoing contact with both parents would often be a good outcome for the child, but in a minority of cases—perhaps a significant minority, especially where domestic violence is involved—it would not. My central concern is the principle. The Children Act 1989 is based firmly on the principle that the child’s welfare is paramount. To qualify that clear statement and instruction to the court with any kind of presumption would mean that the court would start not from the consideration of what is best for each child but on the presumption that a certain thing would be best. The parties involved would have to persuade the court of any other position.

Such a presumption, independent of the evidence, is quite wrong and is not focused on putting the child’s needs first. Any presumption in law, which is what we would be talking about, would have to be taken into account by the courts. As such it would need to be balanced against the paramountcy principle. That means that the central achievement of the Children Act, which is the unqualified principle that the child’s welfare is the court’s paramount consideration, and irrespective of our views on preferred models of contact or whatever, would be undermined.

Mr. Stewart Jackson (Peterborough) (Con): I am listening to the right hon. Lady carefully. I wonder why, if what she says is completely correct, the

paramountcy principle is not explicit and is merely implicit in clauses 4 and 5.

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Beverley Hughes: The Bill is based on the principles in the Children Act; it refers to the Children Act throughout. As the hon. Gentleman knows, the paramountcy principle is enshrined in that Act and therefore that is the principle on which the measures in the Bill are predicated. As the hon. Member for East Worthing and Shoreham admitted, perhaps inadvertently, the amendments would pre-empt the welfare principle. That is precisely what they would do.

Tim Loughton *indicated dissent.*

Beverley Hughes: We will see what the official record says. If I have misquoted him, I will apologise.

The hon. Member for Rugby and Kenilworth (Jeremy Wright) tried to argue that the presumption enhances paramountcy because reasonable contact is good. I do not think that that is true. His statement is based on the presumption that contact would be good in every case. In fact, there will be cases where contact would not be good and would not serve the welfare of the child. The argument that the presumption would enhance paramountcy is flawed.

Jeremy Wright (Rugby and Kenilworth) (Con): Will the Minister give way?

Beverley Hughes: I will just finish the explanation. If the hon. Gentleman will wait a moment then he may be more informed. If I may say to him gently, presumption would be a bad thing for some children, which is why it cannot be introduced into the welfare checklist. There are other reasons, which I will come to in a moment.

Jeremy Wright: I say to the Minister equally gently that the point about a presumption of reasonable contact is that it is rebuttable; it is not assumed that it will automatically happen. She is right that there will be some cases in which contact is not appropriate, but a presumption of reasonable contact does not prevent the court from ruling out contact in those cases.

Beverley Hughes: It is rebuttable, but as I said, having a presumption would change the way in which cases would have to be discussed in court. The courts would have to hear arguments why contact would be a bad thing rather than arguments in support of it. I think that that would significantly compromise the paramountcy principle.

I am also concerned by the argument that it is necessary to insert the word “reasonable” into the checklist or elsewhere in the Bill. The hon. Member for East Worthing and Shoreham referred this morning to comments that my hon. Friend the Under-Secretary made in an earlier sitting. He paraphrased her as saying that courts are always reasonable. I do not think that she said precisely that. She said what the hon. Member for Mid-Dorset and North Poole (Annette Brooke) said in her intervention: courts, as is patently obvious, will always behave in ways that they believe to be reasonable. That is why the introduction of the word “reasonable” is unnecessary and superfluous. As I believe the hon.

Lady said, no court would knowingly make an order that it believed to be

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unreasonable. Telling courts to be reasonable would therefore add nothing to the process. The Bill gives genuine new powers to facilitate contact and enforcement orders.

Jeremy Wright: May I take the Minister back to the issue of the presumption? She says that it would not add anything, but does she not accept that there is a difference between a presumption of contact and a presumption of reasonable contact in the consideration that a court gives to a case? One simply says that the court must consider the merits of giving the absent parent some contact; the other relates to the degree and extent of that contact. Whether or not she agrees with us that the latter is a good idea, does she not accept that there is a difference between contact and reasonable contact?

Beverley Hughes: There is a question as to whether the issue of contact—whether or not it is qualified by defining it as “reasonable”—needs to be in the welfare checklist. If the hon. Gentleman will wait a moment, I will shortly reach the subject of what the welfare checklist is fundamentally about and why inserting contact would introduce a qualitatively different issue for the interests of the child.

Amendment No. 49 would apply a presumption of reasonable contact to the specific issue of enforcement orders, requiring courts to have regard to such a principle subject to the welfare of the child when determining whether to make such orders. That would be rather odd in a context where the pointed issue is the failure of adults to comply with a contact order. The court will certainly have to have regard to the child’s welfare before making an enforcement order, as it may have an impact on a child, but this is not the place for presumptions of what level of contact might be best for the child’s welfare. The court will already have decided on that when making the order, as we discussed at some length on the amendment tabled by my hon. Friend the Member for Luton, South (Margaret Moran). I find it odd that, having agreed with the Government on amendment No. 34 that the welfare of the child should be material but not paramount at enforcement, the Opposition are arguing that there should be a presumption of reasonable contact on the grounds of the child’s welfare.

Mr. Jackson: In order to help the right hon. Lady—*[Interruption.]*

The Chairman: He is trying to be helpful.

Mr. Jackson: Thank you, Mr. Hancock. May I give the right hon. Lady a real-life example and ask her how the welfare of a child is compromised by a contact order that prevents grandparents from putting “granddad” and “grandma” on a Christmas card? In labouring the issue of reasonableness, we are making a clear distinction, as there is in the real world though not necessarily in the Bill, between contact and reasonable contact.

Beverley Hughes: The hon. Gentleman has a strange idea of helpfulness. He raises an idiosyncratic example, though I cannot say that it would never occur in

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practice. The basic point is that when a decision is made on contact, the issues will be decided by the court on the basis of the individual circumstances and the interests of the child. Beyond that basic premise we do not agree with anything that would limit the court or require it to think in a certain way, because we do not want to constrain the paramountcy principle.

New clause 8 is slightly different. It, too, would explicitly qualify the paramountcy principle by stating that, in the absence of contrary evidence, the court must presume that a certain arrangement, namely co-parenting, would be best for all children. I assume that co-parenting means the nearest that is possible to equal involvement of both parents. I recognise the good intentions behind the proposal and I have great sympathy with it as a parent myself. I want fathers to be much more involved in the bringing up of their children, whether or not they are separated. However, saying that that is what we believe, and recognising it in case law—as the courts have done—is quite different from writing it into statute. If we write it into statute we are telling the courts to make orders in line with that presumption in all except very exceptional circumstances, which is quite different from saying that they should order what is best in the interests of the child.

If adopted, the amendment could lead to wrong decisions. To take an example that may oversimplify but which I shall give none the less, if a court believed that a split of a child's time, say 80:20, between parents would be best, but could not find strong evidence to back that, it would still have to issue an order as close as possible to 50:50. That rather extreme example serves to illustrate—*[Interruption.]* It serves to illustrate the bizarre considerations that the court would have to get into.

New clause 12 would put a caveat on the “no order” principle, which is a principle in the Children Act that courts should not make orders with respect to children unless they are satisfied that to make an order would be better than not to do so. That seems to me to be commonsensical. Again, I understand the motivation behind the new clause, but it would require courts to make orders for reasonable contact even if they did not believe that to do so would be better for the child. That seems a perverse proposition.

Similarly, new clause 18 would require CAFCASS officers, and, in Wales, Welsh family proceedings officers, to act on a principle of reasonable contact when responding to family assistance orders.

1.15 pm

As hon. Members know, such orders direct the CAFCASS officer to advise, assist and befriend the person named in the order and are intended to support families in difficult circumstances at any point in the process. In fulfilling that role, it is not for CAFCASS officers to second-guess whatever orders the court may have made about contact. Having said that, the CAFCASS officer has to consider what is in the best

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interests of the child, but I do not believe that it is right for us to tell them to make presumptions about what that might be.

New clause 19 would create an explicit presumption of reasonable contact in

the Children Act 1989. I made it clear, as I have done several times, what difficulties I anticipate arising were we to do that. It would qualify and, in effect, conflict with the approach intended for the courts through the paramountcy principle. The 1989 Act is carefully designed to direct the court to put the children's needs first with no qualification. For the court to start with presumptions, only to row back from them on the basis of the strongly argued evidence that would be required, is incompatible with such an approach.

New clause 20 would add a provision to the welfare checklist stating that the court should have regard to

“the desirability of reasonable contact between the child and the non-resident parent”.

That was recommended by the Joint Committee that considered the draft Bill, and we considered that recommendation carefully. However, it is not what the checklist is for. It lists a number of aspects of a child's development that a court should consider in making its decisions, but they are not factors that prejudice what sort of decisions should be made, only factors that should be sensibly kept in mind.

In response to the point made by the hon. Member for Rugby and Kenilworth, I would make that distinction in this case. The checklist contains a list of factors, but it is for the judge to decide in each case what circumstances will meet the needs of a child best in relation to those factors. The reasonable contact inclusion would tell the judge, “We think that in almost all circumstances, to be changed only on rebuttal, contact is always beneficial.” Clearly, there are cases where that would not be so.

New clause 11, like a number of other proposed changes we have examined, was considered in the other place and was voted against by a significant majority. The new clause would alter the definition of a contact order so as to refer to reasonable contact taking place

“in the absence of good reason to the contrary”.

As I said in relation to the other proposed changes, we have made it clear why we cannot support that suggestion.

I have set out at some length why the amendments and new clauses are immensely undesirable. They are focused on the needs of adults, not children. They would compromise the paramountcy principle that lies at the heart of the 1989 Act and would lead to orders being made when even the court making them did not believe they were the best thing for the child.

Mrs. Maria Miller (Basingstoke) (Con): I want to press the Minister on something she said about the welfare checklist. She rightly said it dealt with factors in the child's development. Is she truly telling me that the role of a parent is not an important factor in a child's development? There is an awful lot of evidence suggesting that the role of a parent is of absolutely fundamental importance in the development of a child, and I cannot really understand her argument.

Beverley Hughes: I obviously did not make myself very clear. The welfare checklist deals with things that the court needs to consider which contribute to the welfare of a child: physical, emotional and educational needs, background and how capable each parent, or any other relevant person, is of meeting those needs. The latter factor in particular refers to parents. However, the checklist does not prejudge whether a particular circumstance relating to any one of those factors is beneficial or not. The court has to make that judgment, so it will consider an individual child and decide in relation to all prevailing circumstances whether, for example, contact will contribute to the emotional well-being of a child.

By inserting “contact” and “reasonable contact” on the checklist, the court would have to make an a priori assumption in the case of every child that contact would contribute beneficially to emotional development. There will be children for whom that is not true and for whom contact would be undesirable. *[Interruption.]* We have a fundamental difference of position about whether that is the right way to go about things. The inclusion of “contact” would introduce to the checklist a qualitatively different factor from those that are included already, because it would force the court to assume that in terms of the factors on the checklist, a certain outcome is a priori beneficial. We do not agree with that.

Tim Loughton (East Worthing and Shoreham) (Con): Returning to the statistics and figures that I quoted earlier, on the basis that 99.2 per cent. of parents are deemed suitable to have contact with their non-resident children, for whom contact will be beneficial, why does the Minister base her entire argument on the 0.8 per cent. who are deemed not to be?

Beverley Hughes: As I pointed out to the hon. Gentleman, there is already a recognition that the court must make a judgment in relation to the welfare checklist about how capable each parent is of meeting the needs of the child as defined by other factors on the checklist. It does not matter that he quotes those statistics; the fact is that there will be some children for whom contact will not be beneficial. In any case, in relation to the welfare checklist and the post-separation arrangements, the court must take into account every child’s unique set of circumstances. It would be neither right nor in the interests of children generally for the court to have the paramountcy principle of the interest of the child as the sole parameter against which it must make its decision.

Tim Loughton: I do not know the right hon. Lady’s circumstances, but she says that she has children. If, like me, she is married with children, does she think that without going through any contact disputes with her partner, she should be subject to the welfare checklist for her children now, or that I should be subject to the welfare checklist for my children now? If not, why do the circumstances change the minute she or I separate from our partners?

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Beverley Hughes: With respect to the hon. Gentleman, that is not the right

question to ask.

Tim Loughton: It is entirely right.

Beverley Hughes: No, it is not entirely right. Parents go voluntarily to court because when they have separated they cannot agree about what should happen. Of course, there is no question of intervening either in situations in which parents are not separated, or, if they are, in situations in which they can agree between themselves and carry out what is in the best interests of their children.

We are discussing the small number of high conflict situations in which parents cannot agree, and we must give the courts a clear framework and a set of principles about the parameters for the decisions that parents ask the courts to make in the best interests of their child. Parents go voluntarily to the courts for them to make that decision, and the welfare checklist that has been enshrined for a long time in the 1989 Act is the right principle. It should have paramouncy over all other factors and over often strong arguments in those situations.

Margaret Moran (Luton, South) (Lab): Is my right hon. Friend aware—I am sure that she is—that 29 children have been killed as a result of contact arrangements, and that the serious case reviews taken recently indicate that five of the 13 families involved were cases in which the court had ordered contact? In other words, children's lives are being lost because courts are ordering contact. Does she believe, as I do, that the proposals that Opposition Members are putting forward would increase the likelihood of children being killed and abused? *[Interruption.]* The hon. Member for East Worthing and Shoreham makes a dismissive noise, but those are the facts.

The Chairman: Hon. Members should bear in mind that, due to the number of amendments on the agenda, interventions should be short and sharp.

Beverley Hughes: I simply say to my hon. Friend that I do not want to be drawn beyond saying that anything that constrains the court at the point at which it makes decisions may result in decisions that are not in the best interests of the child. I have already made that point. I am aware of the cases that she cited, and that Lord Justice Wall is conducting an internal review on them. We may not yet have the full facts.

I want to end on a positive note. While I cannot accept the amendments for the reasons that I have outlined, I think that the issue is important to parents and that the Bill will make a big difference to the problems that parents find in getting compliance from their former partners. I therefore hope that hon. Members will not push the amendment to a Division.

Tim Loughton: The right hon. Lady will hope in vain. Her performance both before and after lunch was exceedingly frustrating but highly illuminating. Before lunch, she seemed to be hurtling head first into the great crevasse of her own argument. She seemed to say, if I understood her clearly—that is quite a tall order, because there was a lot of legalese—that she agreed

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that the number of contact orders has increased substantially. Her case, with which I do not disagree, was that that increase, particularly repeat contact cases, was because contact orders had been breached, and that the problem

was therefore with enforcement rather than with the way in which the courts operate in the first place. However, when I asked her why she thought contact orders were being breached, we had a rather circular argument. The reason is surely that one side does not regard the order as reasonable. That is why it is so essential that a test of reasonableness be inserted into the steer that we are trying to give the courts. She cannot have it both ways, which is why I began by saying that the Government's solution has been to come up with penalties for the system not working rather than to try to get it working. We believe that the amendment and new clauses address that fundamental problem.

I think that at one stage the right hon. Lady grasped what we were trying to do, but she accused us of wanting to turn the system upside down. That is exactly what I was proposing, because we should be addressing the system and tailoring it to deal with the 99.2 per cent. of parents who are deemed worthy of continued contact with children. Whether that figure is 99.2 per cent., 99.1 per cent. or whatever, the presumption is that the vast majority of parents are capable of continued contact and that their children would benefit from it. For goodness' sake, let us ensure that it is reasonable contact rather than judge everybody on the basis that they are a potential threat as represented by the 0.8 per cent. That is why it was absolutely pertinent when I challenged the Minister. If we are to apply the welfare checklist, it should be applied to parents who are in a relationship, too. Why do we metamorphose into potentially bad parents the minute that we split from a partner? I just do not see why that happens.

1.30 pm

For some people there is some sort of metamorphosis, but the vast majority are still good parents after splitting—they still want to play as active a part as possible in their children's upbringing. I repeat the point that I made this morning: family breakdown is not the children's fault in most, if not all, cases. However, the Minister seems to take the view that the minute a couple break up, the non-resident parent loses his status as an obviously decent parent. We are trying to preserve that status quo: the vast majority of parents are decent parents and the vast majority of children do best when they are brought up by both their parents. That should be fundamental to the law as it stands.

That is not contradictory to the paramountcy principle. Every time that this challenge arises you can bet your bottom dollar that the usual twaddle will come back, "Oh but that this will undermine the paramountcy of the welfare of the child." Of course it does not. The welfare of the child is augmented and

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enhanced, unless there is a case proven to the contrary, by reasonable contact, maximised as much as possible, with both parents, one with custody and one without.