

Evidence submitted by Tony Coe, President, Equal Parenting Council

SUMMARY OF PEOPLE/ORGANISATIONS REPRESENTED

1. EPC represents parents—primarily separated mothers and fathers, also grandparents whose role in their children's lives has been terminated or limited by the family courts, simply because the de facto custodial parent wants rid of them. Our leadership team have had direct, personal experience of the workings of the family justice system. Many of us have effectively been stripped of our parental status and have lost our relationships with our children for no good reason.

2. As a consequence of our experiences, we studied our family justice system as it pertains to private law cases and have, over the past four years, been comparing it with Best Practice jurisdictions in the USA. We have found that the UK system is at least 20 years behind such jurisdictions.

3. EPC also speaks for our children—and all the children of separated parents—whose welfare suffers as a consequence of our defective system—a system that falsely purports to hold as paramount the welfare needs of these children. These children suffer in silence while the State fails to help them keep their relationship with their other parent. They suffer now and they suffer in the future, as universal research has proven. EPC is the UK Branch of the Children's Rights Council (CRC) headquartered in Washington, DC. I was introduced to CRC by Lady Catherine Meyer, a past Honorary President of CRC and wife to the former British Ambassador, Sir Christopher Meyer.

4. EPC is a key member of the Coalition for Equal Parenting (CEP). CEP is a collective of like-minded parenting organizations who have all united behind the campaign for an introduction of a legal presumption of "contact" (which we prefer to call "parenting time" in line with Best Practice jurisdictions) for all fit separated parents. For further information on EPC please visit our website at: www.EqualParenting.org

ABOUT THE WITNESS/AUTHOR OF THIS SUBMISSION

5. My name is Tony Coe. I am President of EPC. My bio can be found at: www.equalparenting.org/tonycoebio.htm

KEY AREAS OF COMMITTEE'S INVESTIGATION

6. I understand the key areas to be investigated are:

- whether the family court system is being run effectively;
- whether family court judges have sufficient powers;
- issues surrounding delays caused by the current system; and
- whether people using family courts are getting the service they deserve.

7. EPC has already submitted to this Committee our response (entitled Reform Proposal 2004) to the Government's Green Paper which sets out our position generally. That document should be considered as part of this submission (not printed). It can be found at: www.EqualParenting.org

8. I will therefore not repeat here the contents of our response to the Government's Green Paper. Rather I will use this opportunity to briefly comment on the 4 key areas of investigation which the Committee is specifically addressing.

Is the Family Court System being run effectively?

9. It is not. The system is entirely discretion-based. Personal opinions and biases (of family judges, CAFCASS officers and other so-called "experts") take the place of clear laws. Judges are told in effect,

Decide whatever YOU think is in the best interests of the children of the families that come before you, and whatever you decide will be right!

10. Worse, there is the "no order principle" which says that courts should not make any order until the court has investigated what would be in the children's best interests. By the time the investigation has been carried out it is usually thought by the court to be too late to disturb the status quo. That means the court squarely puts its weight behind the parent "with possession" of the children—that is to say the de facto custodial parent. The other parent ceases to have any importance, except when it comes to providing financial support. Delay, not the best interests of the children, thus determines the outcome.

11. The children's parenting time with both parents needs to be secured by the court at the earliest possible point in time. Unless a parent is unfit*, this should be by way of a temporary or interim order made at the first hearing. Of course, an order is needed! The fact that a fit* parent has had to apply for contact means that parenting time is being blocked! At this vital time in the family's transition, the children must not be starved of the oxygen of parenting time, otherwise the child/parent relationship may wither and die.

[*A parent should be presumed fit until proven unfit. The test of fitness should be this: is there a reason why this parent's role in his/her child's upbringing should be limited or restricted by the State that would apply even if the parents were still together?]

12. The case for a burning need for a legal presumption is argued in my July 2004 Westminster presentation, which please consider as part of this submission (not printed). It can be found at: www.EqualParenting.org

13. The lack of a legal presumption of contact (for all fit parents) and the existence of the no order principle are aggravated by the bias that exists in the system (especially within CAFCASS) against so-called non-resident (ie non-custodial) parents. Because most non-resident parents are fathers, this is often perceived as gender-bias. However, EPC is well aware that the system is broadly just as oppressive when the non-resident parent is the mother.

(Non-resident parents are separated parents who no longer can live with their children. In my submission, in the majority of cases, neither parent should be so characterized, because both parents should be considered resident parents. This is because Parliament's clear intention behind the Children Act 1989 was that shared residence should be the normal form of order. This wise intention has been ignored by judges and by CAFCASS).

14. In order for this Committee to gain an objective understanding of just how badly our private law family justice system is failing children and families it is essential, in my respectful submission, to examine the performance of the courts and CAFCASS in actual

cases. There is no doubt in my mind that the Honourable Members of this Committee would be shocked and horrified to compare the reality of what is happening in cases and to measure it against the testimony before this Inquiry of judges, CAFCASS representatives and others.

[Why this submission has been amended]

15. But I do not expect this Committee to take my word for it. This Inquiry, naturally, will expect evidence. On that basis, EPC prepared for Honourable Members of this Committee in time line format an actual, real life case study ("FAMILY X") that vividly demonstrates (among other things) just how ineffectively the family court system is being run. Further it shows that there is nobody (including very senior, key people in the family court system) who is willing to take overall responsibility for a proper outcome that truly serves the children's best interests; nor indeed for systemic failures, no matter how catastrophic. The case of FAMILY X is typical of what EPC (and similar parenting organizations) see day in/day out.

16. Of particular interest to this Committee will be the fact it can be seen that gross negligence, incompetence and corruption rise to the highest levels within CAFCASS: and yet there is no redress available to the injured parties and children that suffer as a consequence. This is an actual case study and I can personally vouch for the accuracy of this time line and for the facts asserted.

17. This case proves that not even our top family judge, the President of the Family Division herself, was able (or prepared) to take responsibility for making certain that this case was placed on a proper course (even when she knew full well that it had already gone badly wrong) or to hold CAFCASS accountable for its abject failures in this and so many similar cases.

18. I would add that it is one thing for the President to tell this Committee in general and anecdotal terms about how she views the widespread user dissatisfaction with the private law system. It is quite another for Dame Elizabeth Butler-Sloss to be required to account for such a lamentable performance by the system over which she presides.

19. Therefore, in my original submission I respectfully asked the Committee to study the THE FAMILY "X" CASE STUDY TIME LINE which demonstrates the realities on the ground which non-resident parents are faced with every day. I believed it would give this Committee a better insight into the anger and despair that exists across the country—anger and despair that drives some to embark on colourful, sometimes dangerous and inappropriate forms of protest.

20. I have noted in our research of Best Practice jurisdictions across North America that when their legislatures have in the past been considering changes in the law in the direction of shared parenting, they have been especially moved by testimony and/or impact statements from affected parents and family members.

21. That said, on receipt of my original submission to this Committee, I was told that the THE FAMILY "X" CASE STUDY TIME LINE could not be given to the Committee members because it might be a contempt of court and it should be removed from the submission. Hence this amended submission. However, I should like to respectfully suggest that the FAMILY "X" CASE STUDY document can be reviewed by the Committee Members without there being any contempt of court for the following reasons:

- Neither the parents nor the children are identified in the document.
- It is not a court document.
- The information is already firmly in the public domain.
- The case was covered in a BBC One TV programme that was advertised on BBC's web site as follows:

Britain's Secret Shame, Friday 5 Nov, 12:30 pm—1:00 pm 30 mins

SECRET COURTS

The Family Courts operate in secret, so can we trust them to treat parents fairly and put our children first when families break up? Whistle-blowers say thousands of youngsters are growing up deprived of their fathers because the courts are failing. Jan says the family law system encouraged her to give her ex-husband only minimal access to their daughter. The pair eventually abandoned the courts and made their own peaceful agreement to share bringing up their daughter. Steve hasn't had access to his son for four years. He says the courts have refused to enforce their own order giving him access. He's one of thousands of angry fathers waging a campaign of civil disobedience. Some have even lobbed purple powder at the Prime Minister. They claim it's the only way they can get their voices heard on what they say is one the greatest social injustices in Britain today.

- In the above TV documentary, one of the children (now 17) spoke out about how she felt the system had let her down and adversely impacted her life.
- The case is the subject of two successful (but practically fruitless) appeals to the Court of Appeal conducted in open court.
- The first of these was extensively reported in Family Law Journal.
- The document is publicly available to all on the EPC web site.

22. I submit that it is entirely appropriate that the Committee Members have access to this document and I would invite the Honourable Members to review it and to be fearless in pursuing answers to the questions that will inevitably arise in the minds of Committee Members.

23. On the other hand, if it is true, that for the Inquiry to have access to this information would be unlawful, then I respectfully submit that this Committee is impossibly hampered in its work by secrecy laws that are patently contrary to the public interest. I reject the notion that these secrecy laws are there to protect children. EPC has researched jurisdictions across USA and Canada where these cases are open to public scrutiny, where the openness of court proceedings is treasured. At no time have we heard anyone complain that a child has suffered harm as a result of court openness. It is, however, clear to me that secrecy in British family courts is damaging to the interests of children, parents and grandparents.

24. I refer to the words of Lord Denning, who said this on court secrecy:

Every court should be open to every subject of the Queen. I think it is one of the essentials of justice being done in the community. Every judge, in a sense, is on trial to see that he does his job properly.

Reporters are there, representing the public, to see that magistrates and judges behave themselves. Children's courts should also be open. Names should be kept out but the public should know what happens to the child and proceedings should never be conducted behind closed doors . . . Somehow I believe, in the words of Jeremy Bentham, that in the darkness of secrecy all sorts of things can go wrong. And if things are really done in public you can see that the judge does behave himself, the newspapers can comment on it if he misbehaves—it keeps everyone in order. It is of first importance that all proceedings should be held in public and this includes the delivery of judgments together with the reasons for them. This is so that everyone who wishes to do so can come into court and hear what takes place; and also that the reported cases can be taken down by reporters for their own use.

25. The realities of what the system is doing to children and families are simply not understood by judges, Government Ministers or CAFCASS Board Members; that is unless/until they are unlucky enough to be subjected in their personal lives to the indignities and injustices imposed by this seriously flawed system. In short, they simply don't get it! They can't see the wood for the trees; just as nobody could see the wood for the trees at any time during the FAMILY "X" CASE. So nothing effective was done until it was too late!

[Why this submission has been re-amended]

26. I think it is important that I state for the record why this submission has had to be re-amended. Having submitted the amended version (which disposed of the objection to the inclusion of the FAMILY "X" CASE TIME LINE document on the basis that it might constitute a contempt of court) I was then given a new and different reason why this anonymized case study could not go to the Committee. The new reason was that the Committee had decided not to look at individual cases. With all due respect to Honourable Members of this Committee, I believe this decision to be a serious mistake.

27. The proof of the pudding is in the eating and this case study demonstrates beyond any doubt that the system, at all levels, is not putting children's welfare first. Failure to analyze what went wrong in this case allows the culpable people involved (some of whom occupy most senior positions within our family justice system) to continue to hide behind the lie that they are acting in the best interests of children.

28. For the President of the Family Division to come before this Committee and state that she has (or her senior judicial colleagues have) been prepared to meet with EPC leaders and to listen to our point of view is disingenuous. EPC has repeatedly asked Dame Elizabeth (and other senior members of the judiciary) to meet with us. We have requested that they attend educational events and conferences that we have scheduled. These requests have fallen on deaf ears. The President operates at an altitude from which she cannot see the realities of what is happening to children, parents and grandparents in her family courts across the land. Yet these family courts are her ultimate responsibility.

29. The President has not even been prepared to listen to one of the UK's most pre-eminent mental health professionals and court experts—one who she tells me she thinks highly of. Indeed, because he has been prepared to work with parenting organizations like

EPC to achieve positive reforms, she told him at a function that she did not like the company he was keeping. He therefore does not feel that he can speak out for fear that he will be stigmatized by our top family judges. This is a most unhealthy situation and the President should know better than to impose her anachronistic and wrong-headed views on experts who should feel free to advise courts and make recommendations according to what they know is truly best for children.

30. The family courts are ineffective because they start (just as the Government starts) from the premise that they can only help those parents who don't need them! They are like the bank that will only offer you a loan when you don't need one! We are constantly told most parents agree their children's arrangements outside court. What is the relevance of this fact? Is this any justification for oppressing the minority of parents (and their children) who do need assistance from the courts in order to stop their fundamental Human Rights being trampled over?

31. The Children Minister, Margaret Hodge, has looked my colleagues and me straight in the eye and told us that if a custodial parent is determined enough to exclude the other parent there is nothing a court can do about it. With that sort of leadership on this issue, the Government is beaten before it starts! What of the children's and the excluded parents' individual legal and human rights to a family life together?

32. These cases represent 100% of the cases that EPC, and all the other member-organizations of CEP, are concerned about. They are the reason we need an effective, fair and balanced family justice system.

33. The reforms that EPC have proposed would go a long way towards ensuring that children maintain a full and meaningful relationship with both their fit parents. The Government's proposals, as set out in the Green Paper, will not.

Do family court judges have sufficient powers?

34. They already have formidable powers that they could deploy (but rarely do) to protect the children's right to keep both parents, including (but not limited to) the power to:

— grant shared residence, thereby equalizing the status of parents who should be treated equally before the Law (as Parliament intended) thereby removing the need for a battle over the most emotionally charged component—ie who gets custody and who loses their children!;

— transfer residence* away from a parent who is blocking the other parent's role in their children's upbringing;

— order "make up" time when a parent has lost time due to the other parent's lack of cooperation;

— order that contact travelling/costs be shared fairly;

— order the involvement of mental health professionals to facilitate contact**;

— refuse to finalize finance orders until a proper shared parenting plan has been established;

- award costs against a blocking parent; and
- impose the ultimate punishment of a spell in prison***.

[*Only recently have a tiny number of (mainly very senior) judges started to transfer residence largely because we have been pointing out that judges in Best Practice jurisdictions have been successfully applying these sanctions for years.

**Trained professionals are rarely brought in early enough or at all—see FAMILY X.

***Experience from Best Practice jurisdictions shows that the threat of prison is often enough to correct the problem. UK judges won't even do that!]

35. It all comes back to the need for the law to have a clear objective and a clear definition of what is in the best interests of children. Under our current law (like beauty) the concept of the best interests of the children is in the eyes of the beholder! Unclear law is ineffective law.

36. It is common ground (see the Green Paper) that children should be having a full and meaningful relationship (including normal contact) with both parents. Judges need the powers to make that happen and they must use those powers and use them early in a case. Those powers should not be compromised by the ill-conceived no order principle.

37. An additional power that judges need is the power to order parents into Parent Education Classes and mandatory mediation.

38. Judges should apply the Law as Parliament intended; they should not be free to make it up as they go along!

What are the issues surrounding delays caused by the current system?

39. Delays are caused (among other things) by courts routinely commissioning "investigations" even when there is no safety issue. What is the investigation supposed to be achieving? Not only does it cause delays, but it actually fuels hostilities between the parties. The blocking parent becomes more determined. A status quo sets in (ie contact does not happen or there is paltry contact) and the court will not disturb it for fear of acting against what it perceives as the child's best interests. Thus delay determines the outcome, which is plainly wrong.

40. Where there is no issue of safety there should be contact as the Government's Green Paper asserts. The court should be under a positive duty to:

- (a) order contact quickly; and
- (b) enforce its orders promptly and with determination. Delays should not be tolerated.

41. Best Practice jurisdictions use mandatory mediation to help the parents agree a parenting plan that then is enshrined in a court order. Mediation requires a tough, determined, fair and balanced court system working in the background to motivate parties to settle on a basis that is best for the children and the family as a whole.

42. Delays are primarily caused by:

- the lack of clear law, rules and procedures;
- Incompetence/negligence;
- bias; and
- malign intent.

All these elements are evident in the FAMILY "X" CASE STUDY.

Are people using family courts getting the service they deserve?

43. Clearly they are not. Non-resident parents (mostly fathers, but increasingly mothers too) are being driven out of their children's lives. Children are losing one of their parents (and extended family, such as one set of their grandparents) for no good reason. These children are suffering now and into their futures. Their adult relationships suffer and their own children's lives are negatively impacted. The damage to our society grows exponentially as parental separations become the norm, rather than the exception. Dysfunction breeds dysfunction, breed dysfunction.

I look forward to appearing before the Committee, as arranged on 11 January 2005, to elaborate on this submission and to assist this Inquiry to the best of my ability.

Tony Coe

President

Equal Parenting Council

18 November 2004 [re-amended 3 December 2004]