

## **Evidence submitted by Families Need Fathers**

### **THE SOCIAL CONTEXT**

More than half children are reported as wanting more contact than they get from the parent they see less of.

More than half residential parents—excluding those who have shared care already—want to see more of their children than they are allowed.

A majority of men now want a balance between work ambitions and family responsibility, and in some respects are now more egalitarian over the allocation of roles than women.

Fathers now provide a third of child care in intact families.

The normal court order for contact for divided families cuts this by about two thirds.

There is an enormous supply of loving care offered by non-residential parents and wanted by their children that is denied by current arrangements.

The pain and anger felt by contact parents is at last finding a voice. The more important suffering and damage is to children. This is still rarely acknowledged.

Britain has, however, a raft of social and personal problems that are related to insufficient involvement of children with parents. The amount of time children spend with their mother has fallen dramatically as more female parents go out to work. It would be neither right nor possible to reverse this trend. The increase in the time children spend with their father has been as a result of changed personal behaviour and despite little encouragement.

The problems are most acute and the needs are greatest where the family has divided. A formerly involved parent may find themselves excluded. There are suggestions in the research that the parents most involved before the split may be those least likely to be involved after. This exclusion is often combined with pressures and demands on the residential parent that may reduce their availability and effectiveness as a parent.

Shared parenting helps with the emotional loss of children and parents. It also helps reduce poverty, reduces behaviour that causes personal and social problems, improves health, education and work performance. It promotes social inclusion, the safety of children and reduces domestic violence. It improves family relationships and parenting in the next generation. It also saves public money.

The typical contact order, however, still revolves around a fortnightly overnight stay, some hours midweek and sharing holidays, with the rest of the time with the residential parent. Even this is easily frustrated, however, by the residential parent.

The solution to these problems require strategies across the whole of public policy. A key role, however, is the family court system. Only a small minority of parents go to law, but the settlements made by the others are in the shadow of the decisions that are formally decided. Some 40% of our children are affected. If the courts ensured that children had both children involved in their lives, the rest to society would follow. Our current 'parenting deficit' and many of the associated personal and social problems would rapidly diminish.

## **THE STATUS QUO AND THE PERSONAL IMPLICATIONS**

Our current system:

1. Awards what amounts to the possession of the children to one parent.
2. Requires the other parent, either to accept this outcome or to institute moves, inevitable seen as aggressive, to challenge it. Those moves are adversarial, complicated, expensive, long delayed and often ineffective.
3. With some exceptions, condones residential parents refusing their children a relationship with the other parent, even when there is a court order.

Many of the people who seek our help have agonising personal choices. We can explore these with them but cannot make for them. It is that their ex allows their children only a little time with them, and that parent makes all the decisions over contact and other things. To use any formal procedure to challenge this puts at risk the little that they have. The costs of asking for more involvement with the children under present arrangements are certain—trouble, delay, expense and hostility. Any benefit is uncertain. There is no knowing what the court might decide. Any decision may not be enforced anyway.

Some members will take no action that could endanger goodwill. Some of these find that their and their children's position improves. Some find that they lose even what they had and that this is irreversible because of the passage of time. Others take action. Some of these get a better relationship as a result. Others find that the response of their ex is to deny or further reduce contact. They have to accept this, or go down the uncertain process of enforcement.

The outcomes are rarely predictable. The sense of insecurity and stress is alarming. It is often the same or worse for the children.

This is often most acute over holidays and Christmas. The residential parent can simply impose arrangements. The other is powerless in the short run. Any legal adjudication will be long after the event.

## **THE REFORMS NEEDED**

1. The children should be put centre stage. The issues should be reframed away from conflicts between the parents into seeking the best blend of the parents for the children. This should be driven by information about what children normally want and need and by parenting plans. These should be promoted by courts and by CAFCASS. We are very concerned, however, about what seems to be an increasing trend to ask children which parent they prefer. This is extremely distressing to children, and encourages parents to involve children in their conflicts. In the normal case children will want both parents in combinations to be explored with them and others.

Currently the issue as seen by the courts and other services, such as CAFCASS, seems to be to seek an accommodation between the demands of the parents. Often this is on the basis that the residential parent has the power and therefore their wishes are the ones that need most responding to.

We wish to see the agenda as being how to get the best parenting for the children and

getting the parents to agree on that.

2. A presumption of equality. The children should be regarded as having equal rights to both parents. This means that the parents should be in a position of formal equality as far as formal responsibilities and "voice" is concerned. One way to help is to give both parents residence orders unless there are reasons to think this will damage the children. Discussion of the division of parenting time should also start from equality. The final outcome might only rarely be equality, but that should not be excluded. However, departures from equality would be ones that required justification. At present it is the non-residential parent who has to prove that more than token contact is best for the children.

3. Recognition of the wider family. It is very wrong that only parents can apply to the courts. This rule is especially disrespectful of the customs of some communities. The right to contact should be enlarged to at least grandparents.

4. Use of non-adversarial methods. Formal contested court hearings should be a last resort. In them, the parents should be discouraged from rubbishing the conduct character and parenting of the other. The aftermath of a hearing at present can be years of bitterness. Legal funding should cease for advocacy of the views of the parents except in special circumstances. Children however should have their advocates.

5. Some certainty of outcome. There is at present no guidance about what results are to be expected, even about what is relevant. This encourages litigation, and also results in what appears to be widely different approaches in different areas, or even judges in one area. These should be reduced by parenting plans and guidance.

6. Active case management. At present the courts are purely reactive. They respond only when a party demands it and then put many barriers in the way of whoever asks for their help. The courts and CAFCASS should have a proactive role in seeking the best parenting for the children. There should be no final outcome of family proceedings—for example a divorce or a financial settlement—unless satisfactory co-parenting arrangements are in place.

7. A revamping of CAFCASS. This needs to be changed from an organisation that reports on the parents to the courts to one that actively promotes the parenting needs of children. The primary focus should cease to be assisting the court process. It should be diverting parents away from contested hearings into the making of child-centred parenting plans. They should offer preventative service of advice and support to parents including those who have not started proceedings. They should administer revitalised and reformed family assistance orders. This should be funded from savings in legal aid.

8. Judicial continuity. The constant chopping and changes is wasteful of resources and encourages habits that disadvantage the weaker party—namely each judge or magistrate trying a new tactic or giving an unco-operative parent "another chance".

9. Accreditation. Decisions should only be made by parties with sufficient knowledge and experience in the needs of children, in communicating with children, in the effects on children of family separation, and in using non-adversarial methods in these contexts. Accreditation should apply to all parties, though the schemes may need to be different.

10. Quality control. There is at present no monitoring of what is ordered or why. This is essential information. There needs to be audit of court orders, publicly available statistics

on key questions and investigation of prima facie discordant practices.

11. End to delay. Delay works against the interests of children. In particular it works against their needs for both parents. Very often a new status quo is instituted before the issue comes up for decision. There are not valid reasons for the extraordinary delays there are at present. The first hearing or meeting should be within a week of the first approach and a final hearing normally within a month. There must be provision for deciding urgent issues—such as disputes over holidays—in time.

12. Enforcement. There is much debate, often lacking in detail, about enforcement procedures and vague promises to legislate. Whatever is done, this should be clear—that denying children the contact ordered is not acceptable and will not be permitted. Taking action for enforcement should not be the responsibility of the contact parent. The authorities should take responsibility for ensuring their decisions are complied with.

13. Orders should show more respect for stability. This is particularly the case where a parent seeks to move a child in such a way as a relationship with the other parent becomes difficult or impossible. The onus should be on such parents to show that this rupture is for the benefit of the children involved rather than for the advantage of the parent seeking it. They should also be expected to offer practical and financial help to enable the child to retain and develop their relationships with both parents

14. There needs to an assumption that where a child has lost contact for whatever reason, not only because defiance of an order but because of illness or some activity that disrupted the normal pattern of contact, that the child is given equivalent parenting time in lieu.

15. Better speedier investigation of allegations. One factor that urgently needs audit and quality control is the treatment of allegations, for instance those of sex abuse or domestic violence. Evidence of insufficient attention to these issues on occasion is combined with our experience of an over-reaction to allegations including malicious ones. Better guidance is needed and more resources devoted to speedy and fair investigation of allegations. At one pole children may be exposed to risk, at the other they may be wrongly denied a relationship with a loving and loved parent. If risk is established, the appropriate decisions need to be made. If the allegations prove to be false there should be robust treatment of perjury and attempting to pervert the course of justice.

16. Less secrecy. No judicial commentator said "It does not matter is justice is not done, so long as it seems to be done". However, our family courts are no longer trusted. Things are done in secret family courts that would cause scandal if widely known. Hearings should be in public, and evidence and reports public, subject to protection of the identity of individuals.

17. Moral leadership needs to be shown where a parent neglects a child, for example not seeing them whether there is a court order or not. It should be open to a parent, perhaps even a child, to institute proceedings where a parent is not acting on their responsibilities

18. An end to institutional sexism in the family justice system. Our prime objection to the status quo is to the "winner takes all" system, but there appears to be an assumption that extreme circumstances have to be shown before a father is given a residence order or children more than slight contact with a NRP. In the latter case, children whose mothers who do not have residence orders are also discriminated against. There may however be

some movement in a less discriminatory direction recently and in the higher courts.

Conversely, it is rare for a non-residential parent to be denied all contact—although most such decisions may not be visible. Making no order may have the same effect, and many may withdraw applications for orders.

Orders to see children only in contact centres are abused.

19. The right to seek help. At present the contempt of court rules create problems for parents seeking advice information and support other than from solicitors. The rules need relaxing.

20. There need to be more sources of information and help for parents in dispute over their children. Currently the first port of call is often solicitors who have an interest in conflict and may have no training in the needs of children. Many of the other sources of information may be biased towards the residential parent. Neutral, child centred services need to be more available, based on a recast CAFCASS.

## **ABOUT FAMILIES NEED FATHERS**

Families Need Fathers is the second largest membership charity in the family field. (largest—Gingerbread). Its primary function is to help and support parents living apart from a child to maintain and develop that child's relationship with them. We are the only organisation that provides this help on a national scale. We also do the sort of lobbying that charities traditionally do. We are almost wholly voluntary but, none the less, help some 100,000 families per year.

We are a gender-equality organisation that respects diversity. Through our branches and volunteer network we have contact with most sectors of society. Whilst we seek to help families before and after any legal conflicts, most people come to us for help at the point at which conflicts, often legal ones, are acute. Help at this point is central to our work, although our national helpline, using Telephone Helpline Association training and standards, has been finding a range of callers who can often be helped to avoid the destructive effects of our Family procedures.

We have been a charity, administering to the needs of people disempowered, and often forcibly estranged from family members, for over thirty years. We are not associated with other organisations that have recently been involved in high-profile publicity stunts.

The devil is in the detail in all family cases, and the Family Courts are no place for most of this detail to be thrashed out. We are at a loss to understand why the Family Courts, and their government overseers, cannot understand how such powerful courts have a pervading influence over the whole gamut of family disputes. We believe that some urgent reforms are needed that would be of immense benefit to the long-term interests of most children, reduce the workload of the courts, and reduce the damage in many cases that do not reach them.

John Baker

Chair Families Need Fathers

15 November 2004