



FAMILIES NEED FATHERS

Families Need Fathers response and summary of the Centre for Social Justice report, *Every Family Matters*

http://www.centreforsocialjustice.org.uk/client/downloads/WEB%20CSJ%20Every%20Family%20Matters_smallres.pdf

“The general collapse of ordinary family life, because of the breakdown of families, in this country is on the scale, depth and breadth which few of us could have imagined even a decade ago. [Government] is allowing the whole family justice system to be starved to death. It fails to recognise the singular importance of the family justice system to the functioning of our society.”¹

The report from the Social Justice Policy group recommended that there be a “review of family law” and this prompted the Centre for Social Justice to form a commission comprised of experts which took evidence from 115 consultees. Families Need Fathers was one of those consulted. *Every Family Matters* may be one of the most comprehensive and exciting reviews of Family Law for the past 40 years.

The review was divided into seven sections; the first section addressed the need for family law reform, paying particular attention to the Family Law Act 1996. Section two addresses Family Law and relationships in the UK today, noting the changing nature and role of the family. Section three addresses family and marriage support, most interestingly recognising the need for ‘relationship hubs’. Section 4 addresses the processes involved with family law, with attention to Domestic Violence. Most relevant to FNF is Section 5 which addresses children, contact, residence, relocation and the rights of the extended family. Section 6 addresses the financial element of family law. Section 7 addresses Family Law and alternative family structures, exploring ‘Fathers Not Included’ and key recommendations.

This summary analyses the key recommendations made in the report and measures its success by assessing it against our aims.

¹ Mr Justice Coleridge, speech to Resolution National Conference, April 2008

Section 1: The Need for Family Law Reform

Families Need Fathers supports the claim that "Parliament has not given sufficient attention to family life through failing to enact necessary and appropriate changes" The consequence of this is disastrous, the law is out of date and "failing to reflect changes in family life and parenting patterns." It is also the case that it is "...confusing and sometimes contradictory...".

Principles of Family Law Reform

The following are principles of law which the commission recognised as being important, the Family Law Act 1996 is referred to throughout and it is hoped that it would be made into primary legislation.

- " Support for marriage, married couples and the institution of marriage;
- Support for family life;
- Every reasonable opportunity to save saveable marriages and other domestic relationships;
- Looking after the best interests of children;
- Protection of the vulnerable and potentially vulnerable, especially in matters of safety and personal protection;
- Fairness and justice, and being seen to be fair and just;
- Access to justice for all;
- Clarity, certainty and predictability of outcomes;
- Simplification and accessibility of procedure;
- Consistency of outcomes across the country and between similar cases;
- Impact on court resources, legal aid and other direct costs;
- Encouragement to private ordering (with couples being strongly encouraged, after having obtained appropriate legal and practical advice and information, to reach agreements themselves if they are happy to do so);
- Encouragement to settle out of court through Alternative Dispute Resolution and other means;
- Principle of 'no fiction' or artificiality in procedure, in court forums or in the law;
- No bargaining chips;
- Juridical continuity wherever possible;
- Sanctions against disproportionate legal costs;
- Greater court management;
- Overcoming delays in court procedures and with greater case management;
- Taking account of international trends;
- Creating a law which respects national morals and values yet also respects international families from different backgrounds."

Families Need Fathers are very supportive of these values; however we feel there is a need to see further elaboration of the definition of 'fairness' and address the need for a principle which recognises the importance of both parents and extended family to children.

Section 2: Family Law and Family Relationships in the UK today

The section begins by evaluating the trends in marriage and cohabitation in the UK and looks at the importance and value of marriage. The report then moves on to confront family breakdown, "children are often profoundly affected by parental separation, often carrying the scars into their adult lives and personal relationships." It is suggested that the "cost to our nation of relationship breakdown has been estimated at £20-£24 billion; between £680 and £820 for every taxpayer²".

This section also considers divorce law in the UK, the discussion surrounded the issue of proposing a 'no-fault divorce'. The report states that this area distracts "attention from more fundamental issues and very necessary reforms". It is suggested that a three month period of reflection and consideration is required at the outset of the divorce process; this would be a neutral notice. This suggestion was first seen in the 1996 legislation. Families Need Fathers supports this recommendation in theory, as we understand that more information and support are available during these months. This hopefully will result in either safe marriages being saved or less conflict arising during the divorce proceedings proper. This could be especially important to prevent arguments over parenting time arrangements.

The report then addresses the issue of cohabitation, which raises certain problems in terms of assets and status. The report makes it clear that they would not support cohabitation law. They "recommend instead more education of couples to raise greater awareness of their rights and limitation in their relationships, and opportunities to provide certainty and planning in their financial affairs."

Section 3: Family Law and Family Life Support

Pre-Marriage Information and Preparation

"Marriage preparation can significantly reduce the possibility of marriage breakdown", the report encourages and promotes a strong Government lead on encouraging couples to undertake "high-quality, standardised and accredited pre-marriage information and preparation, delivered in an accessible fashion".

² This figure was a conservative estimate made by the SJPG, when taking into account the ONS data on the number of taxpayers, compared with the IFS figures on child support and taxes and benefits relating to children and known figures on the cost of income support, as well as further costs to society from areas such as unemployment and crime which are the indirect result of family breakdown. For more details see Social Justice Policy Group, 2006, 'Fractured Families' Volume 2 of Breakdown Britain, Centre for Social Justice, p68.

Families Need Fathers supports this recommendation, on the understanding that the message 'it is in the best interests of the child to have both parents' is strongly emphasised. There is also opportunity here to educate against, and therefore hopefully prevent, conflict.

UK Family Relationship Hubs

Families Need Fathers are very supportive of the recommendation to introduce a similar model to the Australian Family Relationship Centres. The 'Hubs' which the report describes are not an exact replica of the Australian centres, they do however aim to coordinate and identify the support available. The report very sensibly recommends exploring the use of existing Surestart Children's Centres.

Section 4: Family Law and the Family Law Process

Information before the issue of Proceedings

There was a consensus among those consulted for the review that too many people were entering into family court proceedings without being fully aware of "direct and indirect costs". The review recommended the "use of communication technologies to assist the dissemination of information". Families Need Fathers supports this recommendation in the hope that this would encourage less people to go to court and make decisions together.

Alternative Dispute Resolution

The report proposes mandatory attendance at information provision meetings, which would include full information about alternative dispute resolutions. Before commencing any form of law proceedings, you would have to prove your attendance of the meetings. In the hope that this would lead to more amicable arrangements, Families Need Fathers would support this recommendation.

Legal Aid

The report comments on the dire state of our legal aid system. The report recommends that "budgets for family legal aid must immediately be ring-fenced, that banks should be encouraged to promote more finance for family law litigation and the courts should have the power to grant interim lump sums to help with these costs." The report also recommends reducing the statutory charge to make it in line with market rates.

Section 5: Family Law and Children

Contact and Residence

The report looked at the evidence from Families Need Fathers that the Children Act 1989 is in need of reform, the view was expressed that there was nothing in law that acknowledged the reality of early 21st century living. The report was keen to recognise that the bias that faces the 'Non-Resident Parent' cannot be ignored; however it mentioned that this should not wholly determine the course of the review.

We are disappointed that the report did not suggest a presumption of shared parenting because it was thought that it "...would introduce inflexibility into the system and hamper judges' discretion in a way that could conflict with the paramountcy principle."

Different Approach- Principles Not Prescription

"The review has concluded that we have to steer a middle course where we lay down principles rather than presumptions...However, we are aware that this cannot only be about the child and that we need to acknowledge that parents do have rights". It is also suggested that parental responsibility should be clarified and explained, Families Need Fathers agrees with the need for this.

Although the report does not recommend a presumption of shared parenting, Families Need Fathers is very encouraged by the conclusion of this section which suggested amending The Children Act "...to include principles for contact and residence that are clearer and more explicit..." The report is excellent in the way it recognises the change in care patterns and the greater willingness to accept shared parenting and strongly recommends that "Parliament therefore needs to address a significantly changed social and parenting context since the Children Act 1989 was drafted.

The report also recommends the principles to be laid down in amendments to the Children Act, they recommend that a new subsection of Section 11 of the Act be introduced:

- (1) In proceedings in which any question of making a section 8 or section 13 order, or any other question which respect to such an order, arises:
 - (a) the court shall, in addition to the considerations contained in s.1(3) of this Act, also have a regard to the principles:
 - (i) **all those with parental responsibility shall be presumed to have an equal status** in their children's lives following separation unless the contrary was shown;
 - (ii) that children are most likely to benefit from the substantial involvement of both parents in their lives subject to the need to protect them from abuse, violence or continuing high conflict.

- (b) in determining if, when and how to make an order providing for a parent to have a **substantial involvement** in the life of the child, the court shall in particular consider the benefit to the child, and the reasonable practicality, of contact of sufficient frequency and duration that the parent is able to have a substantial involvement in the child's day to day routine and activities; this may be in the form of a joint (or shared) residence agreement.
- (c) in assessing the benefit to the child of making an order that allows for a parent to have a substantial involvement in the life of the child, the court shall have regard to the extent to which that parent has in the past had such an involvement and/or has fulfilled his parental responsibilities, including where appropriate, the regular payment of child support and other financial provision and support,
 - (2) the court shall (in the light of any rules made by virtue of subsection 3)-
 - (a) draw up a timetable with a view to determining the question of making a section 8 or section 13 order without delay; and
 - (b) give such direction as it considered appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.

So, in other words paragraph (a) refers to equal status, but not equal time. Paragraph (b) requires the court to consider the benefit to the child of a contact order or shared residence order that allows for frequent contact. The focus here is on involvement with the child's day to day routine and not just activities. Although this recommendation doesn't necessarily go as far as we would like it to, **it is a substantial improvement to the current situation and this is definite progress to our ultimate aims.**

Other issues

The report also considers the delays in Cafcass reports, it mentions that reports generally work against the father. "With the adjournments for Cafcass reports often being for at least 14 weeks, this is a severe prejudice against the applicant for better contact. The delay is against the best interest of the child." The report suggests either statutory or practice direction guidance for setting prescribed periods.

Contact Centres

The report was concerned about the funding of Contact Centres, which is patchy, unreliable and reliant on volunteers. The report recommends a "partnership of funding between central government, local government, Cafcass and the centres themselves... payments by parents except for exceptional services should become the norm, given the lack of available finance for this essential service and the fact of parental responsibility.

Relocation and International Children

The report comments on the liberal nature of our jurisdiction in making relocation orders. It is worried about this and suggests "A change in the law regarding relocation... to take better account of the changed patterns in parents, the considerable impact on the child of relocation away from home and other home environment features and wider family members, yet taking account of the increased movement of families." The report also recommends an international Convention to establish a consensus on this important issue. This is something FNF is fully in favour of.

Rights of extended family

The report has taken in to account the increased importance placed on the wider family and recognises specifically the unique and special role that grandparents play. The report usefully recommends removing the two-stage process when grandparents seek contact; "...grandparents seeking contact should not be placed in the same legal position as other extended family members or stepparents to the family who need leave to apply to the court... an approach that supports and encourages mediation between the grandparent and the parent with residence (like that facilitated by the Australian Family Relationship Centres) may have a real prospect of reproducing outcomes for the family".

Section 6: Family Law and Finance

Pre-Marital and Marital Agreements

The report concluded that "it would be unjust to have legislation for binding pre-marital agreements without the courts having some discretionary opt-out to intervene for justice and fairness in exceptional circumstances and we recommend retaining the wording proposed by the Government in 1998 for the discretionary opportunity to open upon agreement, namely significant injustice."

Financial Provision on Divorce

Currently the principle of English financial provision on divorce is the equal sharing of all assets, unless there a good reason to "depart from equality"³. The report was very conscious not to lose many of the good elements of our current system and build on the present system. They recommended using web-based electronic calculation for predictability and so less people need to go to court. The report also recommends dividing assets in to non-marital assets and marital assets, similar to the system in New Zealand. "We have deliberately not proposed dramatic and radical reform because we consider that some of the essential elements of the existing law are of fundamental and valuable importance, accord with English national mores and values, and should be retained. It is fettered discretion, whilst acknowledging that marriage creates obligations and commitments which should be rightly recognised,"

³ Para 65 of Charman Judgement. See Charman v Charman (2007) EWCA Civ 503

Taxation

Currently there is no fiscal benefit within the income tax system for married couples, which is different to the majority of European countries. The report recommends introducing some sort of framework to this effect.

Section 7: Family Law and Alternative Family Structures

Families Need Fathers supports the report in its objection to the “falsification of the birth certificate, which has always been intended to be a true record of a person’s birth origins and genetic parentage as far as that is known. We therefore recommend greater transparency in the birth registration system and moving birth certificates to the General Register Office. We further recommend introducing an adapted ‘special guardianship’ status and over the longer term, we recommend continuing and starting new, qualitative research to compare outcomes for children born in alternative household structures, both in their early years and later in life. Whilst the law has taken cognizance of the implications of new assisted reproduction technology, nothing should be codified which will diminish or discount the importance of biological parenthood.”

Section 8: International Families

The report recognises and places significance on the “international dimension to family life”. The report strongly advocates that England should only apply English Law in family law cases and it rejects the application of law which has come from the European Union.

Conclusion

To dismiss the importance of this document because it does not specifically include a ‘presumption of shared parenting’ would be a mistake. To judge the review from our point of view it would be useful to analysis it against Families Need Fathers aims to reform family law.

Our first policy aim is to introduce a ‘legal presumption of shared parenting’, although this was not specifically recommended, it was suggested that the Children Act needs to be amended to include principles for “contact and residence that are clearer and more explicit” and those with parental responsibility should be presumed to have equal status in aspects of the children’s lives. They also suggested that legislation should recognise the importance and benefit of having ‘substantial involvement’. This is a huge move forward from our current system and they are recommendations that should not be ignored or underplayed.

Our second relevant aim is for robust procedures to be put in place that ensure mediation becomes the norm and contested court proceedings the last resort. We also aim for more support services to be available. This is something that the report comments extensively and comprehensively on and is ultimately addressed by the reports recommendations.

The issue of removal from the jurisdiction is also focused on and seen as an issue of increasing importance. A change of the law is recommended which gives more weight to changing patterns of parenting and the effect of losing contact and links with the wider family. The report also sensibly recommends proposing international consensus on this international issue.

The importance of grandparents and the wider family is recognised within the report and it recommends removing the two stage process in applying for grandparental contact. This is a great step forward and an issue we used in one of our recent campaigns.

Families Need Fathers also campaigns for greater resources for Cafcass to avoid delays in reporting, and therefore avoiding loss of contact for prolonged periods of time. Although increasing the resources available to Cafcass is not mentioned, the report does address the delays in reports and proposes statutory of practice direction guidance for setting prescribed periods.

In conclusion Families Need Fathers is very supportive of the report and hopes that this Government and future Governments will implement these very important recommendations fully.