

Response by PARITY

The family justice system in this country is seen by many observers and users as matriarchal. It mirrors one of the original aims of feminism - for mothers, the 'unfettered control' of their children. As a result, there is considerable anecdotal evidence to show that many fathers do not get justice in the family courts. Indeed, in terms of contact arrangements, broken with almost legal impunity, resident mothers are often perceived as being above the law. Hiding behind such mantras as 'the best interests of the child', fathers are now in effect second class citizens. The fundamental concept of 'equality', so prevalent now in most other areas of our lives, has yet to penetrate into the fortress of family justice. The status of the non-resident parent is clearly subordinate to that of the resident parent, not only in day-to-day matters but legally. For example, a resident parent can remove a child out of the country for up to 28 days without the consent of the other parent, whilst no such provision is afforded the non-resident parent.

PARITY therefore welcomed the setting up of the Review of the family justice system, so that a good look could be taken at what was actually happening and perhaps even recommending serious reforms to significantly improve it. However, regrettably, the basic problems remain, although some tinkering of the system has been recommended, albeit reform of limited extent. Resident mothers will continue to rule OK, and fathers will still be seen, and treated, as subordinate.

No real sanctions have been proposed to deter false allegations or perjury, malicious parental alienation is still not given due weight, and the 'best interests of the child' are often identified with those of the mother's interests. In other words, the perception is, and it is probably not far off the actual case, that the family court system is geared largely towards mothers.

This is why the Review decision not to recommend some form of Equal or Shared Parenting arrangement, necessary to boost the status of excluded fathers (and some mothers), is so disappointing. And it is particularly disappointing because it appears to be based on questionable evidence, particularly from Australia where shared parenting has operated since 2006. We can only suspect that disproportionate weight has been placed by the Review on submissions made by academics and groups with entrenched views on this issue

The two main reasons given by the Review for such a decision are that a similar emphasis on shared parenting for separating couples in this country would prove too disruptive for children, and also would make it necessary for family courts to allocate time that parents each had to spend with their children. We regard both these fears as questionable. Indeed, one Australian commentator⁽¹⁾ has previously called them 'myths'. This same source reported that, on average, between 70% and 90% of Australians have consistently provided strong support for the 2006 Shared Parenting laws, and considered that only a vocal minority with vested interests, including lawyers, feminists and single mother groups, have opposed them..

We understand that shared parenting laws of some form are already successfully in place in over fifty jurisdictions around the world, as well as Australia. There, a recent study by the Australian Institute of Family Studies into the 2006 Shared Parenting laws, found that they were actually having a positive outcome for children. The study also found that there was no obvious link between the 2006 laws and any increased risk of domestic violence or assault against women and children, this addressing the

disquiet expressed by some opponents that allowing fathers a stronger right to have a continuing connection with their children might increase this risk. But in any case, this caveat is about contact and not about Shared Parenting per se.

According to other Australian sources, a recent Senate review of a new amendment to the current Shared Parenting laws failed to identify any cases of children experiencing problems due to shared parenting.

It is therefore most puzzling that, despite this encouraging experience in other jurisdictions, the Review decided against recommending Shared Parenting in this country, even with restrictions in certain circumstances.

Domestic abuse

This is now a major factor in family court considerations. However, almost all reference to it in the Review was in the context of female victimisation. This despite the annual Home Office surveys of intimate violence which consistently estimate that at least one in three victims of domestic abuse, including in the category of 'severe force', are male. [A similar proportion applies in Australia.] Lower proportions of 15% to 20% male victims recorded by police forces in England and Wales suggest a significant under-reporting by male victims, much more than that by female victims. Indeed, father victims in particular are often deterred from reporting because of the real fear that, despite being the victim and unless they have obvious serious injury, it will be they who are removed from the home, leaving the children with the abusive mother, and with probably little or no subsequent contact for them with their children.

As more studies worldwide of domestic abuse are published especially in western democracies [there are over 250 such studies now listed on the internet], it is clear that, far from being uni-directional, in about half of violent households the violence or abuse is bi-directional. The reality is therefore that mothers can be as abusive as fathers, but such culpability appears not to weigh heavily or even count at all in decisions generally about child residence and contact.

A Canadian Parliamentary Inquiry in 1998 into family law proceedings⁽²⁾ was told that "perjury was rampant in the [Canadian] family courts" "and, moreover, goes unpunished" (women family court judge) and also that allegations of domestic abuse and of child abuse peak at times of court proceedings (evidence from several child protection agencies across Canada). There is no reason to think that the situation is much different in this country particularly with our more closed family court system.

Other Canadian experience also suggests that such false allegations are often made with the overt or covert complicity of lawyers involved. "They are a lethal weapon in the business of parental alienation. They are a tool for achieving sole custody of children and creating fatherlessness"⁽³⁾.

And yet, the Family Justice Review just didn't touch on the fundamentally important issue of false allegations being made in family court proceedings, and the need for effective sanctions to deter them.

Child abuse

Whilst the Review sought Australian experience of Shared Parenting, it is a pity that at the same time it did not take notice of some pertinent facts about child abuse there. According to the Australian source previously referred to⁽¹⁾, children in Shared Parenting arrangements have the lowest recorded incidence of child abuse in Australia, even lower than that in intact families. Conversely, children in sole custody arrangements have the highest risk of child abuse in Australia, this probably

reflecting the higher risks associated with step-parents and other non-related adults than with natural parents. The Review should also have noted that over 70% of all familial child abuse in Australia occurs in single mother households.

In this country, NSPCC statistics for 2007/08⁽⁴⁾ revealed that 175,000 children had called the helpline in that year, 117,000 girls and 58,000 boys. Of these, 11% of boys said they had been physically abused (6,430 boys) and that 39% of perpetrators were fathers (2,494) and 28% were mothers (1,765). 9% of girls (10,530) said the same and that 37% of perpetrators were mothers (3,896) and 25% were fathers (2,632).

NSPCC statistics for 2008/09⁽⁵⁾ revealed that 12,268 children had called their helpline in that year saying they had been sexually abused, 4,811 boys and 7,457 girls. Of 1,965 boys calling, 20% (986) said the perpetrators were fathers, and 20% (979) were mothers, and of 2,318 girls, 27% (1,986) said perpetrators were fathers and 4% (332) were mothers. Another 3,826 children, 886 boys and 2,940 girls, who called said that sexual abuse was an 'additional' problem.

Such statistics suggest that singling out excluded fathers as being a particular risk to their own children is most unfair, and that using this as a basis for denying all excluded fathers equal parental status is disproportionate and most unjust.

Breach of contact orders

In our view, this is one of the most serious weaknesses in the family justice system needing reform. Anecdotal evidence suggests that the courts are often just not doing their job. With almost legal impunity, contact orders are broken repeatedly and unjustifiably by resident parents. Many such parents display implacable hostility. Each time, the only redress the contact parent usually has is to re-apply to court for a further direction, with all the delay and expense this involves. It is curious also, that in any monitoring of residence and contact orders, it appears that generally more emphasis is placed on any misbehaviour of contact parents, usually fathers, than of resident parents, usually mothers.

The relative helplessness of contact parents is highlighted by a case reported to PARITY by a father who has repeatedly suffered unreasonable obstructed contact over the years, with no helpful court intervention. This pattern of obstruction recently culminated in a planned and agreed overseas short holiday with his daughter being stopped by the mother at the last minute, causing considerable upset to the girl and several hundred pounds loss to the father.

The Review touches on this problem, but shrinks from recommending the only serious remedy in persistent or entrenched cases - the reversal of residence (unless this is not practicable or feasible). If it was known that this would be applied after, say, three instances of deliberately obstructed contact, it would surely concentrate the minds of obstructive parents.

Closed family court system

Although privacy for family members in private law proceedings in the lower courts is understandable, it is arguable that the closed system now operating, which deals with increasingly large numbers of cases and children, and the consequent lack of transparency and accountability, is not really in the overall public interest. Such lack does not promote a healthy judicial system robust enough to provide equality for both parents and for their children. Judicial decisions, or a pattern of decisions, are hidden from public view, and effective and impartial research into the outcomes for families and children of such decisions is discouraged or made extremely difficult. The

interests and rights of children therefore are, or can be, also prejudiced. Family justice, like all other forms of justice, must not only be just but also be seen to be just.

PARITY was therefore most disappointed that the Review was against any further, even small, opening of the system's closed doors, but gave no reasons for this.

Children's rights

The Review did not spell out clearly how the rights of a child⁽⁶⁾ to stay in contact with both parents after parental separation (unless this might hurt the child) should impact on decisions about residence and contact, and indeed especially on subsequent wilfully obstructed contact by a resident parent. The Review questionably dismissed the notion of parent's rights, but did not indicate how the child's rights to contact with both parents could be accommodated in lieu.

Nor did it consider the argument that unjustifiable obstruction of contact with an excluded parent is itself a form of child abuse and the obstruction itself a form of domestic abuse on the contact parent.

So while possible risks associated with contact parents, ie. mostly fathers, were very much to the fore in its deliberations and conclusions, the Review did not even consider a range of risks associated with resident parents, not only with obstructed contact, but also with alienation and hostility, and of course, child abuse.

Conclusions

PARITY has drawn attention to some aspects of the Review's report. Our overall view is that it failed to consider the whole issue of parental separation and the consequences for children in the context of equality. Some key weaknesses in the current family justice system appear to have been left untouched, and more regrettably, the basic subordination of fathers in the whole process effectively ignored. Instead, the family justice system appears to be now embroiled in sexual politics.

(1) Sonja Hastings. Top 10 myths about Shared Parenting (Child Custody laws) in Australia. Shared Parenting, 13.06.2010

(2) 'For the sake of the children'. Canadian Parliament, Report of the Special Joint Committee on Child Custody and Access. December 1998

(3) Hon Anne Cools. Canadian Senate Debate 17 February 2000. Debate on second reading of Bill S-9 to amend the Criminal Code (abuse of process)

(4) NSPCC ChildLine casenotes. 'What boys talk about to ChildLine'. July 2009

(5) NSPCC ChildLine casenotes. 'Children talking to ChildLine about sexual abuse', November 2009

(6) Art 9. UN Convention on the Rights of the Child. September 1990

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