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HOUSE OF LORDS CHILDREN AND FAMILIES ACT 2014 SELECT COMMITTEE INQUIRY

House of Lords Select Committee on the Children and Families Act 2014

Is the Children and Families Act 2014 fit for purpose?

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1. The greatest problem introduced with the Children and Families Act 2014 can be found under '**PART 2 Family justice, Section 11, Welfare of the child: parental involvement**' [Annex I]. The idea that the court should "*presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare*" reflects a de facto assumption generated by case law over many years that "*contact should be terminated only in exceptional circumstances where there are cogent reasons for doing so, as a last resort, when there is no alternative, and only if contact will be detrimental to the child's welfare*" (Re J-M (A Child) [2014] EWCA Civ 434 per Black LJ at [25]). This assumption has caused tremendous harm to vulnerable children and women in our society. It has even led to the death of many women (House of Commons Home Affairs Committee, [2018](#)) and of children including as a result of court-ordered unsafe contact arrangements (Women's Aid, [2004](#), [2016](#)).

2. The presumption that the involvement of both parents after parental separation is always in the child's best interests fails to reflect the fact that behind Section 11 lies a contingent, contradictory and ambiguous body of research, clinical findings and theoretical literature that reveals no firm conclusions on how children's welfare on parental separation can best be served (see Barnett [2014](#) for a review of this literature). Perhaps more importantly, it has created a dangerous power tool that has ended up trapping vulnerable children and women in endless cycles of abuse and violence and fails to protect children from harmful parenting, and parents. This also enables tremendous power over the child, and their resident parent, by parents whose presence is inconsistent.

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3. It is important to bear in mind the history of the presumption of parental involvement. In March 2010, the UK government appointed a board to carry out a review of the family justice system, including whether the Children Act 1989 should be amended to include a statutory presumption of shared parenting (Family Justice Review Panel, [2011](#)). The review considered evidence of the Australian experience of shared parenting legislation. Australian studies by Chisholm ([2019](#)), Kaspiew et al. ([2009](#)) and McIntosh et al. ([2010](#)), which were considered by the panel, found that maintaining a 'meaningful relationship' was being measured in quantitative terms and was being prioritised over the protection of children from harm leading to risks for children. Taking these studies and other evidence into consideration, the final report of the Family Justice Review recommended against a statutory presumption of parental involvement, stating that "*the core principle of the paramountcy of the welfare of the child is sufficient and that to insert any additional statements brings with it unnecessary risk for little gain*" (Family Justice Review Panel, [2011](#), p141 para 4.40). Nevertheless, the UK government decided, against all the weight of evidence, including from judicial bodies, that there should be "*a legislative statement of the importance of children having an ongoing relationship with both their parents after family separation, where that is safe, and in the child's best interests*" (Ministry of Justice, Department for Education, [2012](#)).

4. Two studies of the operation of the presumption of parental involvement ([Kaganas \(2018\)](#) which analysed reported child arrangements cases and [Harwood \(2021\)](#) which is the first empirical study to explore the impact of the presumption on the lower courts) found that the presumption has not changed the way courts decide cases, as they continue to rely on case law to support their strong preference for contact. However, both studies found indications that lower courts were using the presumption in cases of abuse, that it is shifting the balance in favour of domestically abusive parents and that it is reinforcing the dominant pro-contact culture which the Ministry of Justice Harm Panel found to be so problematic.

5. Research also indicates that children who have experienced domestic abuse need a stable home with a protective parent. However, the pro-contact culture of the family courts, reinforced by the statutory presumption of parental involvement, often results in a progression towards frequent direct (preferably overnight) contact even in cases of domestic abuse (Hunter, Burton and Trinder, [2020](#)) which often is more harmful than protective of a child (Perry, [2009](#); Meltzer et al., [2009](#); Thiara and Gill, [2012](#); Coy et al., [2012](#); NSCDC, [2014](#); Rowen and Emery, [2014](#); Callaghan et al., [2015](#); Katz, [2015](#); Perry et al., [2016](#); Thiara and Humphreys, [2017](#); Katz et al., [2020](#)).

6. We see at least three scenarios where the presumption of 'parental involvement' creates more harm than good: i) **domestic abuse and/or child abuse**, ii) **parental abandonment**, and iii) **complex parenting relations**. In all these circumstances, parents are either forced to stay in dysfunctional and harmful co-parenting relations, forced to parent with an abuser who is enabled to continue the abuse, or forced to parent with an absent parent who the law allows to step in and out while uprooting a child's life without any consequences. In all these scenarios, parental involvement causes more harm to the child than welfare. It is noteworthy that while the law can enforce parental involvement on a protective parent and a resistant child, a non-resident parent cannot be compelled to spend time or be involved with their child. It therefore operates in a very one-sided way.

7. The current statutory presumption presents uncomfortable resemblances to the legal frameworks in place before the ratification of the Custody of Infants and Women's Property Acts, when women and children were seen as chattels. We live in a gendered society, built around gendered power relations, with domestic abuse being highly gendered. Globally, almost a third of women are subjected to violence by their partner or ex-partner (WHO, [2021](#)). In a survey including over 30,000 domestic abuse service users in England between 2021-2022, 94% reported male perpetrators (Samuel and Williams, [2022](#)). In this context, the statutory presumption of parental involvement can provide a vehicle for continued control and abuse of mothers and children seeking escape and protection from abusive fathers (Coy et al., [2015](#); Birchall and Choudry, [2018](#); Katz et al., [2020](#)).

8. The 2020 Ministry of Justice Harm Panel Report concluded that there is an urgent need to transform the pro-contact culture that has allowed for systematic minimising of violence and abuse of women and children while forcing them into unsafe child arrangements with dangerous fathers (Hunter, Burton and Trinder, [2020](#); Barnett, [2020](#)). Rather than challenging these systemic problems, the statutory presumption of parental involvement reinforces them. It is clear that the legal systematic pressure of contact at all costs has been reinforced by this paragraph. Although the Act clarifies that "*involvement*" means "*involvement of some kind, either direct or indirect, but not any particular division of a child's time*", the aim of the family courts is generally for frequent, direct contact (preferably overnight), and when contact is ordered to be indirect or supervised due to safeguarding concerns, there is inevitably an expectation that it will progress towards direct, unsupervised or overnight contact (Birchall and Choudry, [2018](#); Hunter, Burton and Trinder, [2020](#)). We must come to accept, as other countries have done, that parental involvement is not always in the best interest of the child nor always protective of their welfare. We also need to accept that a child free from a lifetime of intimidation, abuse and trauma will be

much better off than a child in regular contact with two parents where one is abusive and the other is forced into decades of abuse by this law.

9. There were attempts in **the Children and Families Act 2014** to avoid such harm by, for example, stating that “*parental involvement*” refers to “*if a parent can be involved in the child’s life in a way that does not put the child at risk of suffering harm*” or that “*parental involvement*” is not appropriate when harmful e.g. “*unless there is some evidence before the court in the particular proceedings to suggest that involvement of that parent in the child’s life would put the child at risk of suffering harm whatever the form of the involvement.*” However, this puts the onus on the protective parent to prove that the presumption should not apply, and the Ministry of Justice Harm Panel Report cogently highlighted the current difficulties experienced by survivors to prove the abuse, and when proven, for its impacts to be taken seriously by the courts .

10. Concerningly, we have over recent years also seen how mothers attempting to follow legal guidance to protect their children from abuse, harm and safeguarding concerns are being penalised for doing so by being seen by family courts and professionals as obstructive of parental involvement. There is a growing body of evidence indicating that mothers raising allegations of domestic abuse in the family courts are silenced with the use of counter-allegations of parental alienation. The Ministry of Justice Harm Panel Report, which included over 1200 responses from individuals and organisations, concluded that allegations of parental alienation were being used systematically to silence and diminish abuse allegations (Hunter, Burton and Trinder, [2020](#)). Some survivors even reported being advised by professionals, including their own legal representatives, not to raise domestic abuse because the courts would take a negative view of this, and that it may be used against them as ‘evidence of parental alienation’.

11. Internationally, parental alienation is not a universally accepted argument. The World Health Organization [removed it](#) from the International Classification of Diseases in 2020, while the European Association for Psychotherapy determined the concept to be “[unsuitable for use](#)”. The United Nations Commission on the Status of Women recently raised serious concerns in a [panel](#) of how parental alienation has been asserted in legal proceedings to award contact and even custody to abusive fathers claiming parental alienation.

12. It is clear that the pro-contact culture of the family courts, reinforced by the statutory presumption of parental involvement, has enabled the dangerous litigation narrative of parental alienation to gather momentum in child arrangement proceedings. Mothers seeking protection for their children from abuse and potentially fatal violence are increasingly losing custody of, and all contact with, their children when they are

accused of parental alienation (Doughty et al., [2018](#); Barnett, [2020](#); Meier, [2020](#)).

13. Last month, Italy followed in Spain's footsteps and banned the use of Parental Alienation in the family courts. Meanwhile, in the US we see how Kayden's, Greyson's, Kyra's and Jennifer's Laws are advancing fundamental changes to family court proceedings, while Keira's Law in Canada similarly demands safe custody and child contact arrangements. Removing the statutory presumption of parental involvement would be a major step in moving England and Wales in the right direction, towards protecting victims and children from abuse rather than penalising them. This Committee has the opportunity to finally set things right.

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Annex I:

Children and Families Act 2014

PART 2 Family justice

Paragraph 11 Welfare of the child: parental involvement

(1) Section 1 of the Children Act 1989 (welfare of the child) is amended as follows.

(2) After subsection (2) insert—

“(2A) A court, in the circumstances mentioned in subsection (4)(a) or (7), is as respects each parent within subsection (6)(a) to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child’s welfare.

(2B) In subsection (2A) “involvement” means involvement of some kind, either direct or indirect, but not any particular division of a child’s time.”

(3) After subsection (5) insert—

“(6) In subsection (2A) “parent” means parent of the child concerned; and, for the purposes of that subsection, a parent of the child concerned—

(a) is within this paragraph if that parent can be involved in the child’s life in a way that does not put the child at risk of suffering harm; and

(b) is to be treated as being within paragraph (a) unless there is some evidence before the court in the particular proceedings to suggest that involvement of that parent in the child’s life would put the child at risk of suffering harm whatever the form of the involvement.

(7) The circumstances referred to are that the court is considering whether to make an order under section 4(1)(c) or (2A) or 4ZA(1)(c) or (5) (parental responsibility of parent other than mother).”

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