

What is best for children?

This may not have been a Happy New Year for those families in the midst of family breakdown. We were greeted with the news piece on the 3rd January that family lawyers could expect a rise in new clients seeking advice on separation and divorce issues as the New Year started. It was, however, the Government's initiative which headlined on the 5th January which attracted attention, one paper leading with "*divorced mums and dads could get legal right to see their children*".

The debate about how to best ensure that children see both parents upon relationship breakdown is complicated but very important. The Family Team at Russell-Cooke is clear in its advice that as long as there is no risk to the child, and it remains in his or her interests, a child should have a meaningful and full relationship with both parents upon family breakdown. In our view, decisions must be made with the child's best welfare interests as the paramount consideration, as the Children Act 1989 makes clear.

The Government's initiative is the next step in a long discussion, but the problem with the debate is that confusion is rife around the terms used by parents and the law and the "presumptions" that follow. Legal terms such as "residence" and "contact" are interchanged with terms such as "shared parenting" and "equal parenting" for which there are no agreed definitions – e.g. does equal parenting mean 50:50 or not? And what exactly is shared parenting? We also see reference every now and then to terms such as "custody" and "access", even though these were replaced by "residence" and "contact" in the Children Act 1989.

The Government has suggested that there is a change to the law to state that the Courts will be under a legal duty to ensure that both fathers and mothers see their children upon divorce. In making this proposal the Government seems to suggest some sort of legal presumption of shared parenting, although it is not clear if they mean equal time parenting. In so doing they seem to be distancing themselves from the report prepared by the Norgrove Committee (<http://www.justice.gov.uk/downloads/publications/policy/moj/family-justice-review-final-report.pdf>) which was commissioned in 2010 to undertake a wide ranging review of Family Justice and which reported in 2011. The Government's formal response to this review and its recommendations is awaited. However, the Norgrove Committee concluded that there should be no changes to the law, and in particular no presumption of shared parenting. Indeed they recommend that the focus should remain on the welfare interests of the child and in making a decision consistent with those interests. The Committee did recommend that the terms "residence" and "contact" are changed to "child arrangements orders" which is a recommendation that appears to be widely welcomed by family lawyers.

There is clearly some way to go before any changes are formally proposed, debated and finally adopted, or not, and we will keep you informed of developments and how this will affect your family.

In the meantime, our approach is simple - all members of the Family Team at Russell-Cooke are committed to helping separating parents make the best arrangements for their children, as far as possible by agreement and with the least amount of acrimony and distress that is possible for the benefit of the children.

If you are going through a divorce or separation, and need advice about aspects relating to children or finance please contact one of the [Family team](#).

For more information please contact:

Samantha Little

Partner

020 8541 2025

Samantha.Little@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice.
No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP.
© Russell-Cooke LLP. January 2012.