

Changes to family law - presumption of parental involvement

Following on from the changes earlier this year to the way in which the Family Courts approach disputes about children when there is family breakdown, on 22 October 2014, the law governing how the Courts determine children cases (the Children Act 1989) was amended to require the Family Court to presume (unless the contrary is shown) that a parent's involvement in a child's life will further that child's welfare.

So what exactly does this mean and how is it different?

First of all, "involvement" means some kind of direct or indirect involvement in a child's life, but does not go as far as specifying any particular division of a child's time. In the early debates about this provision there were discussions about whether "involvement" should be defined or if the presumption should be about "equal share" parenting. In the end, those suggestions were not accepted by Parliament and the result is a simple presumption of involvement

Direct involvement would be face to face time the parent has with the child. Indirect involvement by a parent would be time spent with the child but not face to face, such as a phone conversation, video call or by letters or cards. The presumption can be put aside in cases where there is evidence to suggest that a parent's involvement with a child would put the child at risk of suffering harm. In such a case, the court should consider if the risk identified can be mitigated by limiting the form of involvement that parent has with the child (e.g. allowing the parent to see the child as long as there is supervision of that time). The presumption applies only to the parents of a child and does not extend to other people who care for or spend time with the child, for example step parents or extended family members.

The inclusion of this presumption in the Children Act 1989 follows other changes made to that Act on 22 April 2014. Those earlier changes included removing the terms "contact and residence" from legislation and replacing them with "child arrangement orders" which sets out with whom a child should live, spend time and otherwise have contact with. Please follow this [link](#) to an earlier Russell-Cooke article that sets out this and other changes made to the Children Act 1989 earlier this year.

The presumption of parental involvement applies to all applications made to the court for a child arrangements order and all cases involving issues of parental responsibility. As this is such a recent change, the practical implications for clients are currently unclear.

In reality, the presumption is likely to be taken as reinforcing the principle already in place in the Family Court that it is almost always in a child's best interests to have contact with both parents following separation, unless that would be harmful to a child. That said, the very fact that the presumption is now enshrined in legislation will bring this to the forefront of a judge's mind when reaching a decision that is in a child's best interests and a reinvigorated approach to ensuring both parents are involved in a child's life is a positive step. Parents will be encouraged to think in these terms when coming to Court and to try and resolve matters based on this presumption using mediation and other forms of dispute resolution rather than asking the Court to make a decision.

Whether the new presumption leads to practical changes in Court decisions and how it will be interpreted remains to be seen. We will be monitoring the situation closely and will report back as further clarification is provided by the courts.

The family team at Russell-Cooke has extensive experience of assisting parents when relationships break down and there are children involved. If the issues dealt with in this article affect you, then please do contact us to see how we can help.

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