



Family Rights Group Submission

to

Consultation on co-operative parenting

following family separation

August 2012

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1. What is Family Rights Group?

Family Rights Group is the charity in England and Wales which specialises in advising and supporting families who are involved with, or require, local authority children's services, about the care, welfare and protection of their children. We promote policies and practices that help children to be raised safely and thrive within their families and community. We campaign for effective support to help struggling parents and family and friends carers who are raising children that cannot live at home.

We help families to have a voice and make or influence decisions about their children and ensure that when the state is involved in families' lives, it draws upon their strengths to meet their children's needs whilst ensuring children are always safe. Although the focus of our work is supporting families whose children are involved with local authority Children's Services rather than those involved in private law dispute resolution procedures, our interest in this consultation derives from the fact that:

- i) many of the parents we advise are separated and
- ii) many of the family and friends carers we advise, who seek to raise children who cannot remain safely with their parents, apply for residence or special guardianship orders, both of which are private law orders.

The following submission reflects this background and highlights particular circumstances which need to be taken into account when implementing any co-operative parenting proposals.

2. The proposed options:

We consider that the current legal framework is adequate to support parents to make plans for their children in a co-operative way. We fear that all of the proposed options for change are likely to encourage, rather than discourage, litigation between parents about arrangements for their children. We do not therefore support any change to the law. However we understand that the government is likely to press ahead with such legislative change and have therefore written this submission on that basis.

When considering the potential impact of the proposed 4 options in this consultation, it is key to think about human behaviour. Despite the government's expressed intentions, we think that many parents are likely to interpret any principle/presumption of co-operative parenting as conferring a **right to equal time**, particularly if their separation is recent and emotions are still running very high. Moreover, the fact that the proposed options guide the **courts** decision-making rather than applying to parents generally, may make parents **more likely** to apply to court to access and 'enforce' this right, rather than trying to reach agreement between themselves.

In our view ***it would therefore be far better for the principle of co-operative parenting as outlined in option 2 to be included as a freestanding section in the Children Act 1989 (for example s.1(A))*** rather than it being included in the welfare checklist (s.1(3) CA). This would mean that it would apply to arrangements for a child in any context, whether or not there is litigation, rather than just being applicable when there is litigation. As such it would provide an underpinning principle

to support parents to make arrangements directly between themselves in a co-operative way, with or without the support of a family mediator, without having to resort to litigation in court.

We are also opposed to any presumption (rather than a principle) being created for similar reasons, namely that a presumption is far more likely to be interpreted as conferring a right on the parent and is therefore likely to encourage even more litigation.

3. Family and friends care:

An estimated 200-300,000 children, who cannot live safely with their parents, are being raised by family and friends, often as an alternative to being brought up in the care system.¹ This number has risen dramatically² and this rise is expected to continue, as local authorities tackle high rates of child protection referrals, seek alternatives to costly care proceedings and grapple with a severe shortage of unrelated foster care placements. The majority of children in family and friends care live with their carer either under a private agreement with the parents (but that means the carer does not have parental responsibility³) or under a residence order or special guardianship order in favour of the family and friends carer.

We are very concerned that the current proposals do not take account of the increasing numbers of children living in these arrangements and think the government needs to ***spell out how the co-operative parenting proposals will work in this context, especially where there is no legal order to secure a family and friends care arrangement.***

4. Enforcement:

We understand the importance of enforcing contact orders where this is consistent with the child's welfare but we are very concerned that the proposal to apply the same enforcement process for child support as for contact is misguided, as it is likely to lead to some parents linking money and contact. It may even encourage 'tit for tat'. These two issues should be kept separate if the child's welfare is to be given paramount consideration, with the respective enforcement systems also kept separate accordingly.

¹ These carers are typically grandparents, aunts, uncles, or siblings, who care for a child because of parental difficulties, such as mental or physical ill health, domestic abuse, alcohol or substance misuse, or imprisonment or bereavement.

² Nandy, Selwyn, Farmer and Vaisey (2011) *Spotlight on Kinship Care: Using census microdata to examine the extent and nature of kinship care in the UK at the turn of the Twentieth century* (University of Bristol)

³ This means they have to refer back to the parents about important decisions about the child and the child may also be removed from their care by the parents