

'I'M NO-ONE'S POSSESSION'

FAMILY JUSTICE RE-IMAGINED

48,244 Court applications (i)

165,000 children subject to
Court Orders (i)

Legal Aid cost £112 million (ii)

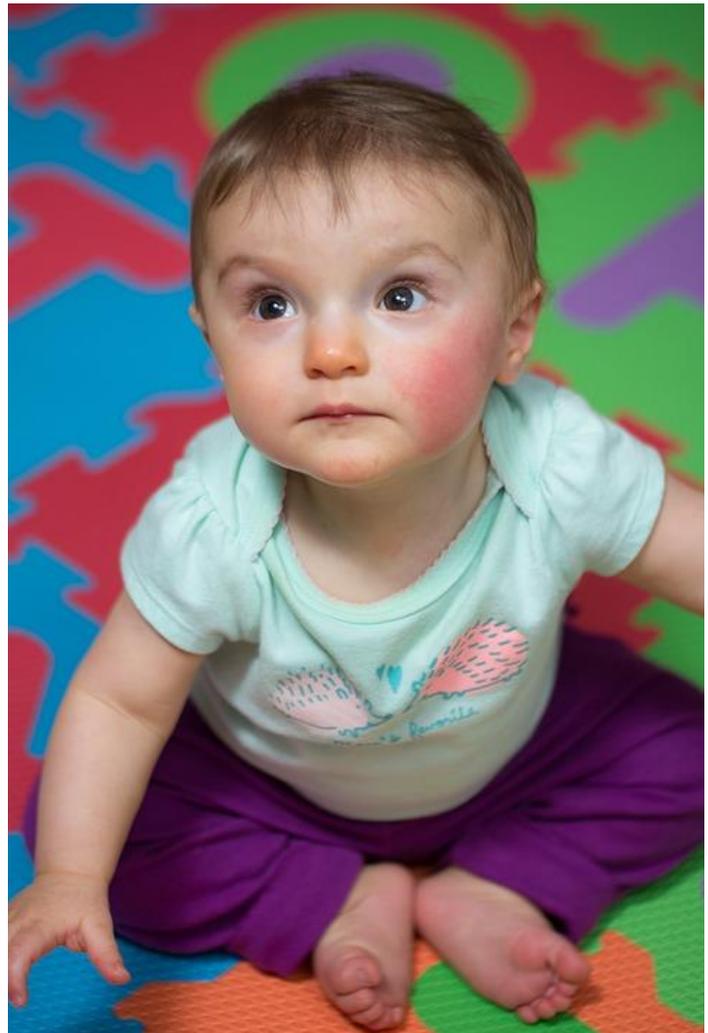
One million children have no
real contact with their father
(iii)

Men make 70% of applications
in Private Law (iv)

37% of women claim they've
been assaulted IN the Family
Court (v)

33% of Private Law cases
neither side had a lawyer (i)

**THERE IS
A BETTER WAY**



- (i) MoJ Family Court Statistics 2016
- (ii) Legal Aid Statistics (England and Wales) 2016
- (iii) Centre for Social Justice—Fractured Families 2013
- (iv) Harding & Newnham 2015
- (v) Women's Aid 2016

MANIFESTO FOR FAMILY JUSTICE 2017

THE PRINCIPLES

- reducing conflict rather than funding it
- establishing a 'normal' set of principles for shared care of children in most cases
- cutting costs wherever possible to reduce the burden on the taxpayer
- focussing money where it will make a difference to children and families
- providing a structure so that parents and children reach their own solutions
- incentivising co-parenting and penalising pre-emptive action that fuels conflict

THE ISSUES

The Family Justice system is in crisis; even the President of the Family Division Sir James Munby says so. Nothing less than a radical re-imagining of the way we handle child contact post-separation will do. Tackling the source of conflict is long overdue.

Men make up around 70% of applicants for s8 Orders in Private Law. That rises to 94% when you look at applications simply to be able to spend some time with your own children. Family Law is a gendered experience and must be understood in that context.

Child contact disputes are characterised in the main by a dynamic where one parent, typically the mother, takes 'possession' of the children. They assert control by preventing or controlling the child's relationship with the other side of their family. Mediation is rejected and fathers are faced with a choice - walk away or make an application to the Family Court

We have asked many lawyers – including Sir James Munby this question

'What is the basis in law that allows one person with PR to prevent their children from contact with another holder of PR without a Court Order?'

No-one has been able to provide an answer to this fundamental question.

CHILDREN ARE NOT THE POSSESSION OF ONE OF THEIR PARENTS

Children have rights – a right to a relationship with BOTH their parents unless that would harm them under Article 9.3 of the UN Convention on the Rights of the Child.

Parents have responsibilities. The Children Act 1989 s3 sets out the definition of Parental Responsibility:

In this Act "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

MANIFESTO FOR FAMILY JUSTICE 2017

We ask 'which part of the word 'ALL' suggests that a parent with PR does not have a right to spend time with their own child, as the Ministry of Justice current asserts?

<https://helpwithchildarrangements.service.justice.gov.uk/parental-responsibility>

Parents tell us that they want the perceived certainty of a Court Order to regularise and provide structure to their arrangements. What they don't want is a costly and profoundly damaging adversarial Court system made worse by delay, confusion and a lack of clarity.

We know from the tens of thousands of fathers and paternal grandparents who have contacted us for help and support that men are dissatisfied with the process and the outcome of the Private Law family justice system. What we learn from Women's Aid is that mothers are also profoundly unhappy, and indeed traumatised, by the system.

Women's Aid organisations assert that **'Men continue their abuse of women by making applications to the family court'**¹ A survey by Welsh Women's Aid stated that: *'The Family Justice system was the most negatively experienced by survivors...'*

So if it isn't working for the 100,000 parents every year who use the Private Law system – who is it working for?

THE PROPOSALS

1. Replace the adversarial system of Family Justice with an inquisitorial one as advocated by the President of the Family Division
2. Define the 'Paramountcy Principle' in simple clear and objective terms so that parents and children can understand
3. Recognise and act to prevent Parental Alienation and other forms of abuse
4. Legislate to incorporate the UN Convention on the Rights of the Child into UK law
5. Introduce 'Standing Temporary Orders' via an online only portal to regularise the arrangements for the shared care of children in the majority of cases.
6. Share the financial aspects of parenting fairly – reflecting a culture in which shared parenting, including responsibility for childcare and finances, is the norm.
7. Enact the provisions of the Welfare Reform Act 2009 to require the compulsory joint birth registration of children.
8. Cut the financial cost of Family Justice by reducing the need for Legal Aid and other costs and focussing on therapeutic and collaborative processes such as arbitration
9. Replace the current enforcement procedures (using C79 application forms) with a system of fixed penalties for breach drawing on the experience of penalties where parents fail to send their children to school.

MANIFESTO FOR FAMILY JUSTICE 2017

THE DETAIL

1. **A NEW SYSTEM** The adversarial Court system makes it harder for parents and children to sort out separation themselves. It hugely increases costs and incentivises allegation and counter-allegation. An inquisitorial system run by the Judiciary with the resources to Order therapeutic interventions would transform the face of the Justice system.
2. **DEFINING THE BEST INTERESTS OF THE CHILD** There are no guidelines to help parents understand what is 'normal'. Family justice professionals tell us 'Every case is different'. They are not. They also say that 'the best interests of the child are paramount'. They are. But how can parents – already in conflict over the breakdown of their relationship reach a child-focussed solution without any form of guidance other than the 'Paramountcy Principle'? A campaign of public legal education with clear guidance on issues such as Parental Responsibility and the 'Best Interest of the Child' must be part of the solution.
3. **PARENTAL ALIENATION IS CHILD ABUSE** The current adversarial system provides a framework for children to be psychologically abused by a controlling parent. 'Wishes and feelings' reports by Cafcass pour fuel on the fire of family conflict. Swift and effective action through the use of s66 of the Serious Crime Act to prosecute parents who psychologically abuse their children in this way is a part of the solution if only to deter those who would abuse their children this way.
4. **UN CONVENTION ON THE RIGHTS OF THE CHILD** – The UK is a treaty signatory to the Convention that underpins the Children Act 1989. The Convention is the fundamental building block of Family Justice in the UK and throughout the world. Article 3 mirrors the Paramountcy Principle set out in the Children Act 1989. We call on the Government to legislate at the earliest opportunity to enshrine the UN Convention in UK law, as it is to an extent, in Wales
5. **'STANDING TEMPORARY ORDERS'** – a concept that works successfully in several States in the USA. We envisage an online only system of application for STOs in England & Wales. These Orders would be granted on application and the payment of a fee of £215. Standing Temporary Orders set a minimum level of contact PLUS a ban on either parent moving the child/ren's home more than 10 miles without consent of the other parent OR the permission of the Court. These STOs would regulate the vast majority of Private Law cases effectively deflecting them from the trauma of the current adversarial system while providing parents with the perceived certainty of a Court Order. A helpful side-effect of the introduction of STOs would be an increase in the revenue to the MoJ from STO applications and a reduction in costs from the lower number of conventional hearings. In the event that one parent has safeguarding concerns about the provisions of an STO then they would be able to make a conventional application for the matter to be heard in the Family Court where the provisions of the STO could be overturned by judicial involvement.

6. **IMPROVED FINANCIAL COLLABORATION** – current financial arrangements for the care of children following divorce or separation incentivises and perpetuates conflict between parents – encouraging one side to take ‘possession’ of the child and reduce or eliminate the shared parenting arrangements. We will be making specific proposals around these issues to the DWP who have primary responsibility for the area.
7. **SHARED PARENTAL RESPONSIBILITY** – we are calling for the immediate enactment of the provisions of Section 6 of the Welfare Reform Act 2009 to require joint birth registration. In addition, any parent who is paying child maintenance for a child for whom they do not hold PR should immediately be granted PR by virtue of making financial provision for the care of the child. It is iniquitous and discriminatory that PR for a child should be allocated automatically to women while the ability of men to gain PR depends upon the consent of the mother. Additionally we call for the Government to set out the meaning of Parental Responsibility in terms that parents and children, but also professionals can understand, and to partially fund a campaign of public legal education.
8. **REDUCING THE COST OF FAMILY JUSTICE** – The cost of the Private Family Law system has not been disclosed by the Ministry of Justice. We know that the combined cost of Cafcass & Cafcass cymru exceeds £150m per year – although a proportion of that relates to their work on Public Law issues. The cost of Legal Aid in 2016 was £112m. We strongly oppose the possible extension of the evidential criteria for qualification for Legal Aid as we estimate that this will increase the costs to the taxpayer by more than £100 million. We do so not because we wish to deny funding to women (who now constitute 85% of recipients of Legal Aid funding – up from 62% pre LASPO) but because there are far better uses for the vast sums of money that would be released by abandoning an adversarial system. Why would we imagine that returning to the pre-LASPO arrangements result in a better series of outcomes for children and families than it did pre 2013?
9. **ENFORCEMENT** – the latest data from Q1 of 2017 shows that the percentage of applications for enforcement that end in an order for enforcement has fallen once again to 0.85%. This makes a mockery of the system. Following lengthy discussions on the issue with the President of the family Division we believe that the answer now lies in removing enforcement from the Family Judiciary and introducing a system of automatic penalties akin to the truancy system.