

We believe that s11 of the Children and Families Act 2014 should be changed to include a 'rebuttable presumption' (*) of equal shared care of children following divorce or separation

TOP TEN REASONS FOR CHANGE

1. **CURRENT SYSTEM ISNT WORKING** change hoped for in the 2014 Children & Families Act hasn't materialised. We believe this is because of the definition of 'involvement' inserted at Third Reading in the House of Lords enabling once a year letter contact to meet the definition. The Child Arrangement Programme introduced as a consequence of the 2014 legislation overturned the 'will of Parliament' by re-introducing the harmful higher status of the 'Parent with whom the child lives' to replicate the abolished 'Residence Order'. Clear guidance for what 'normal' looks like will reduce harm to children from the Court process.
2. **INTERNATIONAL CONSENSUS OF ACADEMIC SOURCES SUPPORT 50/50** – Since 2014 Dr Linda Neilsen and Dr Richard Warshak have produced meta-analyses of dozens of international studies proving that roughly equal shared care provides the best outcomes for children.ⁱ No counter-consensus exists
3. **'POSSESSION' IS 9/10th OF THE LAW** – parents have realised that taking possession of the children is a very effective way of maintaining control. This also perpetuates harmful gender stereotypes that exclude fathers and drive expectations of mothers to be the 'primary carer' for children.ⁱⁱ The Women's Equality Party are also advocating a 'legal expectation' of full involvement of both parents – as this is best for women AND for children.ⁱⁱⁱ
4. **50/50 IS OVERWHELMINGLY SUPPORTED BY THE PUBLIC** – polls including the recent YouGov^{iv} sample of 2000 UK adults shows more than 75% of women support legislative change reducing conflict and cutting the cost to the taxpayer.
5. **THE REST OF THE WORLD IS MOVING TOWARDS EQUAL SHARED CARE** – Belgium, Netherlands, Sweden and others have already introduced legislation for a rebuttable presumption.^v The UN Convention on the Rights of the Child states that children have the right to maintain direct contact and a meaningful relationship with both parents **unless** it is not in their best interests.^{vi}
6. **THE AUSTRALIAN EXPERIENCE WAS WRONGLY REPRESENTED** – The Family Justice review of 2011 was misled on the Australian experience. This was highlighted by Australian academics such as Prof. Patrick Parkinson.^{vii}
7. **UNSUSTAINABLE RISE IN COURT APPLICATIONS** – the previously stated figure that just 10% of separating parents bring their cases to Court has now been shown to be false and the figure is actually closer to an unsustainable 40%^{viii} The comparable figure in Sweden (that has legislative presumption) is 9%^{ix}
8. **IT'S ALREADY RECOGNISED IN EXISTING GUIDANCE** – Cafcass guidance^x already states that where there are no safeguarding concerns the arrangements for the child should maximise the involvement of both parents in their care.
9. **CASE LAW IN THE HIGHER COURTS ALREADY SUPPORTS SHARED CARE** – but only a tiny handful of cases make it as far as the senior judiciary^{xi}
10. **COURTS NEED HELP TO CONCENTRATE ON THOSE FAR FEWER NUMBER OF CASES WHERE THERE ARE REAL SAFEGUARDING CONCERNS**- The President of the Family Division recognised this problem in a speech to a conference of family lawyers in April 2019.^{xii}

(*) The 'rebuttable presumption' of equal shared care means that children should be cared for on a roughly equal split of time by their parents following divorce or separation. It can be rebutted if there are proven reasons (eg safeguarding, practical or any others) that show that is not in the best interests of the child, which remain paramount.

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<https://static1.squarespace.com/static/5154a075e4b08f050dc20996/t/5ae74a1f88251bd2b30f7317/1525107248150/2+Nielsen+60+studies+JDR+.pdf> (see page 2 'Abstract')

ii <http://www.atlas-partners.co.uk/blogs/equality-at-work-and-at-home>

iii Womens Equality Party https://www.womensequality.org.uk/equal_parenting_and_caregiving (paragraph at bottom of page)
https://d3n8a8pro7vhmx.cloudfront.net/womensequality/pages/279/attachments/original/1487934933/WEP_policy_document_2017.pdf?1487934933 (page 14)

iv You Gov and Comres Poll (June 2019) <https://www.thetimes.co.uk/article/fathers-call-for-equal-access-to-children-after-divorce-n5cp9xdxq> <https://www.lawgazette.co.uk/news/campaigners-call-for-shared-parenting-presumption-in-the-law/5070639.article>
<https://www.comresglobal.com/polls/fathers4justice-opinion-poll-june-2019/>

v <https://legiscan.com/KY/bill/HB528/2018> Amend KRS 403.270 to create a presumption that joint custody and equally shared parenting time is in the best interest of the child. Passed on April 26 2018 (81v2 in House, 38 v 0 in Senate)

vi <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> Article 9.3 States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

vii <https://publications.parliament.uk/pa/cm201213/cmselect/cmjust/739/739vw09.htm> (Parkinson)

viii https://www.judiciary.uk/wp-content/uploads/2019/04/pfd_resolution-april19-1.pdf pages 12 and 13

ix Swedish Government Official Report. (2017). *Statens offentliga utredningar* [See the child!]. Stockholm, Sweden: Regeringskansliet. Retrieved from <http://www.regeringen.se/490ab7/contentassets/acc04add4adb4f8fbc560a4983fdcec/se-barnet-sou-20176>

x Cafcass Guidance Good Practice notes point 9 <https://www.cafcass.gov.uk/about-cafcass/policies/>
' In private law cases without significant parenting concerns, and where parents cannot agree, the arrangements for the child should be those that cause least disruption to her or his daily life and routines, and which maximise the involvement of both parents in her/his care.'

xi <https://www.familylawweek.co.uk/site.aspx?i=ed1791> Re C (a child) 2005 EWCA civ.235 para 21 Ratio Decidendi of Lord Justice Thorpe.

xii https://www.judiciary.uk/wp-content/uploads/2019/04/pfd_resolution-april19-1.pdf pages 12 and 13