



Family Law: Relocation and the Case for Reform

Speech by Michael Robinson of The Custody Minefield

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In the last year, there has been considerable and growing criticism of the courts' application of guidance in family law cases where one parent wishes to move the children of the family some distance from the other parent.

The court's current guidance has two main flaws. The first regards the weighting of evidence, in that unsubstantiated opinion over-rides evidence. Judgments in these cases rarely turn on facts, but instead adhere to an out-of-date and a rather patriarchal view of women.

The second flaw is the lack of consideration granted to societal change in the past 40 years. In 2001 when relocation guidance was last reviewed, counsel for the father was unable to provide evidence that the comparative importance of fathers, and their role in childcare, had changed in the previous 30 years.

In the years that have followed since 2001, research has been published which confirms that father involvement in day-to-day childcare has increased 9 fold since the 1970s, and is now near equal that of mothers. The role of the father has increased beyond breadwinner, just as the mother's role has changed to one of also providing financially for the family.

The stereotypical roles of the 1970s household no longer apply in modern society, yet such perspectives continue to influence decisions in family law, and specifically, relocation related law.

Since the time of the case *Poel v Poel*, it has usually been the mother applying to the courts for what is called leave to remove. It is estimated that 90% of relocation applications are successful.

The 2001 judicial guidance imagined that to refuse a primary carer's wish to relocate, would cause her (and the use of gender is within the guidance) such psychological distress that it would impact on her ability to care for the children. I say imagined because in 40 years, there has not been one research study which has supported that opinion. Not one. Not in 40 years. The child is expected to be robust, whereas the primary carer is presumed to be emotionally fragile.

There is however research, and compelling research, which supports that a child will suffer emotional, psychological and developmental harm when separated from one of their parents. Since 2001, we have developed a far greater understanding as to how separation from a parent affects a child?

In December 2009, a study by the Children's Society found children 40% more likely to suffer mental health problems when separated from a parent. 40%. Study after study has found that children are more likely to experience mental health and behavioural problems and are more likely to have mental health difficulties in adulthood due to separation from a parent in childhood. The Children's Society found there to be a correlation



between childhood depression, and the diminishing of parenting time with a father. No doubt the same would be true if children were routinely removed from their mothers. Children now have two significant attachment figures, and separation anxiety and the ensuing psychological problems caused by this should not come as a surprise. Yet the granting of a relocation application subjects a child to this separation 90% of cases.

The Government's own social and educational policy actively encourages both parents' involvement in their children's schooling and education. Why? The Government's own research found that children do better academically when both parents have meaningful involvement in their children's day-to-day lives. In particular, research has found that father involvement has a positive and independent impact on a child's academic achievement.

In our new report on relocation, we present the findings of 15 studies by some of the leading academics and institutions in the world into the effects of parental involvement, and exclusion from children's care.

If it is accepted that a child is likely to suffer harm due to separation from a parent, which evidence clearly shows, do we need further research to confirm that this is only compounded by the effects of relocation? If we can assume that problems for children are caused by a dramatic change to their care arrangements and environment, the most basic common sense would suggest that this is only compounded by the loss of friends, the removal from the familiarity of their home environment and culture, disruption to their schooling and separation from their wider family.

I have heard it argued that these cases are very difficult, and no doubt they are, as one or other of the parents will be disappointed. There is a simple solution, and one devised by Parliament 20 years ago in the Children Act 1989, that the child's welfare should be the court's paramount consideration. More detailed statutory guidance is however required, to ensure that child welfare is considered according to what evidence confirms today, rather than what was believed in the past.

In all British child welfare issues, and the issue of 'relocation' is no exception, the precautionary principle should be applied. While I welcome suggestions that there be specific longitudinal studies into relocation in the future, these will take years, and there is no reason to ignore the abundant and compelling longitudinal studies which show a risk of psychological, developmental and emotional harm when a child is separated from a parent. The evidence to support there being legal reform, and legal reform now, is clear.

That evidence, a review of the debate on relocation, and proposals for legal reform are published in our new report 'Family Law: Relocation, and the Need for Reform'. I would welcome your support in assisting these proposals to become new statutory guidance for the judiciary, so children are not exposed to the risks they face today.

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