

Child Welfare Needs and Rights



Relocation and Leave to Remove

*The need for a new approach in relocation
related family law*



A Report by The Custody Minefield
The UK's leading internet based information resource
on relocation, leave to remove and shared residence
www.thecustodyminefield.com

Foreword by Sir Bob Geldof

December 2009



Foreword



I can hardly read the literature on Family Law without simultaneous feelings of an awful sadness and profound rage. Sadness at what has been done to our children and their families and deep rage for our Family Courts and the inadequate practitioners that work within it.

In the near future the Family Law under which we endure will be seen as barbaric, criminally damaging, abusive, neglectful, harmful to society, the family, the parents and the children in whose name it purports to act. It is beyond scrutiny or criticism and like a secret society its members – the judges, lawyers, social and child “care” agencies behave like any closed vested interest and protect each others’ backs.

The court is entirely informed by outdated social engineering models and contemporary attitudes rather than fact, precedent rather than common sense and modish unproven nostrums rather than present day realities. It is a disgraceful mess. A farrago of cod professionalism and faux concern largely predicated on nonsensical social guff, mumbo-jumbo and psycho-babble. Dangling at the other end of this are the lives of thousands of British children and their families.

Here is one more report that empirically nails the obvious fact that to remove a child from their father (in the hugely vast majority of cases), their grandparents and other family, their school and friends, is wholly destructive to a child and its family.

How much longer must we put up with the state sanctioned kidnap of our most vulnerable? Because in effect that’s what “Leave to Remove” amounts to. How much longer do we tolerate the vested interest intransigence of the appalling U.K. Family Justice system? How long before just one of them admit they have got it ALL wrong and apologise to their myriad victims?

This report is important, timely and vital. To accept its findings, which could have and should have, been conducted at any time in the past 30 years, is to accept the awful conclusion that rather than Solomon like resolving our tragically human disputes with understanding, compassion and logical pragmatism the courts have consistently acted against society’s interest through the application of prejudice, gender bias and awful impartial cruelty.

This report proves it. May God forgive them. I won’t.

Bob Geldof

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Introduction

Relocation cases in family law determine arrangements for children when one separated parent seeks to move, either internally within the United Kingdom or abroad, and take the children with them.

In July 2009, two reports were published which were critical of the family courts in England and Wales and their application of legal precedent in relocation cases. The findings of those reports came as no surprise to legal advisors in this area.

The report by the independent think tank, the Centre for Social Justice, called for **'A change in the law regarding relocation... to take better account of the changed patterns of parenting, the considerable impact on the child of relocation away from home and other home environment features and wider family members, yet taking account of the increased movement of families.'**ⁱ

The second report, funded by the Ministry of Justice, was undertaken and published by Reunite. Reunite is the leading charity on international parental child abduction. In the section entitled 'Systemic Problems', REUNITE states **'Generally, it was felt that children are not well served by the current relocation system and that insufficient attention has been paid, to date, to the effects of relocation on the child. At the same time, the over-emphasis on the happiness of the mother means that the system is apparently stacked against fathers, even custodial fathers, who feel that they suffer a serious legal injustice through the relocation system in this country.'**ⁱⁱ There is no scientific basis to support the opinion that denial of a mother's wish to relocate would be so psychologically damaging as to affect her ability to care for the children.

The last time that relocation and the court's application of precedent was reviewed was in the case *Payne v Payne*, heard in 2001.ⁱⁱⁱ In that case, the barrister for the father argued that the importance of contact between the non-resident parent (normally the father) and the child has greatly increased over the last thirty years. Lord Justice Thorpe, the leading judge in *Payne v Payne* held that **'No authority for the proposition is demonstrated. Without some proof of the proposition I would be doubtful of accepting it.'**^{iv} In this report, we provide that proof.

A wide body of research has been published in the years following the ruling in *Payne v Payne*. Such research continues to be given insufficient weight by the court, in preference of the non-scientific opinions in existing case law.

As reported by a barrister in Family Law Week in 2009 **‘...it has been difficult to persuade many judges of the importance of these points in the total welfare assessment exercise because of the significant emphasis traditional case law has placed on the impact on the mother of refusal of grant of leave.’**^v The emphasis on the happiness of the mother overshadows the educational, developmental and psychological effects of relocation on a child which are compounded by the loss of their established friendships and other relationships, the loss of familiarity of their home environment and a change in school and sometimes culture.

Research tells us that when children are denied meaningful contact with a parent, they are more likely to suffer mental health problems; stand a greater chance of inhibited social skills affecting them in adulthood; and are disadvantaged academically. Such outcomes are currently permitted by the court in 90% of cases.^{vi}

There are wider welfare implications on a child from relocation than the diminishing of their relationship with the non-relocating parent. While little is known about the effects of relocation on children in the UK, the opinion of a social worker in Canada is worth noting **‘From the child’s perspective, it can spell a very disruptive event with lifelong consequences. They may forever interpret the world as a hostile place with no internalized sense of control. Hence parents are well advised to strongly consider the disposition of their child and the necessity of the move. Typically these children are coming to terms with the parental separation and changes in parental availability, usually determined by the parenting plan. The child is grieving the loss of the family and subsequent changes to the family and how they present their changed family to those in their world. This adjustment alone can take many, many months to years, depending on the complexity of the situation and conflict between the parents. The changes added to that by a disruptive move could undermine any success for reasonable adjustment.’**^{vii}

The Courts of New Zealand rejected *Payne v Payne* as precedent in relocation cases in 2002 as **‘it put a mother’s needs above a child’s’**.^{viii} New Zealand introduced legislation in 2005 that protects a child’s psychological and developmental need for stability and security by more clearly defining the matters that support child welfare.^{ix} Their amendments took into account the United Nations Convention on the Rights of the Child to which the UK is also a signatory. Such a model, as detailed further on in this report, should be introduced in England and Wales via an amendment to the Welfare Checklist within the Children Act 1989.^x



Pending the introduction of these legislative changes, we ask that Sir Mark Potter, President of the Family Division and Head of Family Justice for England and Wales, implement guidelines to ensure such matters are routinely considered. In this way, the key issues which need evaluation in relocation cases would have a scientific basis and be more clearly defined and child-centered.

We cannot ensure the best outcomes for children if members of the judiciary hold to outdated case law ignoring societal change, and more importantly, scientific research.

In the following pages we present the research which fully supports the need for change.

Michael Robinson

Michael Robinson is the creator of The Custody Minefield, an information resource for separating parents and the extended family. The Custody Minefield is the most visited website on the internet on matters related to leave to remove, internal relocation and shared residence. The Custody Minefield provides legal advice and assistance to individuals and members of charities and was recommended by The Times in 2008.

The Custody Minefield self-help guide for separating parents was recommended by the Magistrates Association in 2007 and endorsed by the Divisional Chair of the British Association for Counselling and Psychotherapy.

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1. Relocation: The effects on Children

Relocation inevitably results in the diminishing of a relationship between a child and the non-locating parent (typically the non-resident parent who is the father). From a developmental perspective, we know the likely effects on children from this. The research supporting this knowledge is set out below:



1.1 UK Research: Effects on Mental Health and Psychological Development

1.1.1 'Involved Fathers Key For Children'. Dr Eirini Flouri and Prof Ann Buchanan for The Economic and Social Research Council (ESRC) 2002

Girls whose fathers are involved in their upbringing are less likely to have mental health problems in later life whilst good father relations can prevent boys from getting into trouble with the police says research released during National Science Week 2002.

'Good father-child relationships are associated with an absence of emotional and behavioural difficulties in adolescence and greater academic motivation too' say Dr Eirini Flouri and Prof Ann Buchanan co authors of the research. **'Teenagers who have grown up feeling close to their fathers in adolescence also go on to have more satisfactory adult marital relationships'** she adds.

The ESRC funded research at the Department of Social Policy and Social Work, University of Oxford aimed to discover whether it could further support US research showing positive outcomes for children whose fathers were more 'involved' in their care. **'An involved father is one who reads to his child, takes outings with his child, is interested in the child's education and takes an equal role in managing his child'** explains Dr Flouri. 'That does not necessarily mean that he lives with the child's mother or is even the biological father of the child' she adds.

The research also shows that a good relationship with the father or father figure can also protect against adolescent psychological problems in families where the parents have separated. **'There was a particularly strong association between father involvement with daughters during adolescence and a lack of psychological distress in adult life'** says Dr Flouri. 'For boys who have involved fathers it was quite marked that they were less likely to be in trouble with the police as they grew older' she adds.

Involvement of the father or a father figure has a significantly protective role against psychological problems in adolescents in families where parents have separated. This finding is independent of whether mothers are also involved.

ESRC Report 2001, Father involvement and outcomes in adolescence and adulthood.

1.1.2 'The Role of Father Involvement and Mother Involvement in Adolescents' Psychological Well-being' Dr Eirini Flouri and Prof Ann Buchanan. British Journal of Social Work 2003; 33: 399-406

This study of 2,722 British adolescents aged 14–18 years explored whether paternal involvement can protect against low levels of well-being even when maternal involvement and risk and protective factors are controlled for. Results showed that **although both father and mother involvement contributed significantly and independently to offspring happiness, father involvement had a stronger effect.**

Fortnightly amusement-park parenting (the old 80:20 formula) contributes little to developing meaningful parent-child relationships.

Laumann-Billings L & Emery RE. Distress among young adults from divorced families, Journal of Family Psychology 2002; 14:671-687.

1.1.3 'A Good Childhood: Searching for Values in a Competitive Age'. Richard Layard and Judy Dunn. The Children's Society (2009)

Based on the experiences of 30,000 children, the research found that 'a child's performance at secondary school, self-esteem and well being as an adult is linked especially to the father's input' and **'children are 40% more likely to suffer mental health problems when separated from their fathers'** and 'on average, children are less likely to fail at school or suffer depression the more they see their separated father.'

Fathers and mothers have different kinds of input to their children, both necessary.

Dr MK Pruett Ph.d, M.S.L, Fatherneed: why father care is as essential as mothercare for your child, Free Press New York 2000.

1.1.4 'The role of father involvement in children's later mental health'. Dr Eirini Flouri and Prof Ann Buchanan. Journal of Adolescents 2003; 26; 63-78

Data on 8441 cohort members of the National Child Development Study were used to explore links between father involvement at age 7 and emotional and behavioural problems at age 16, and between father involvement at age 16 and psychological distress at age 33, controlling for mother involvement and known confounds. **Father involvement at age 7 protected against psychological maladjustment in adolescents from non-intact families, and father involvement at age 16 protected against adult psychological distress in women.**

1.1.5 'Life satisfaction in teenage boys: The moderating role of father involvement and bullying'. Dr Eirini Flouri and Prof Ann Buchanan. Aggressive Behaviour 2002; 28: 126-133

It has been suggested that bullying at school and low social support are related to relatively poor mental health in schoolchildren. Based on data from 1344 adolescent boys aged 13-19 years in Britain, this study explored whether father involvement, as an underestimated - in the related research - source of social support, can protect against low levels of satisfaction with life. Multiple regression analysis showed that **low father involvement and peer victimisation contributed significantly and independently to low levels of life satisfaction in adolescent boys**. There was also evidence relating to a buffering effect of father involvement in that this protected children from extreme victimisation.

Father absence through divorce is strongly associated with diminished self-concepts in children.
(Parish, 1987).

1.2 UK Research: Effects on Schooling and Educational Development

1.2.1 'The Impact of Parental Involvement on Children's Education'. The Department for Education and Skills 2003.

Fathers play an extremely important role in their children's lives and a plethora of research indicates that father involvement is significantly related to positive child outcomes. A father's interest in a child's schooling is strongly linked to educational outcomes for the child. Fathers who devote time to their sons are giving them a greater chance to grow up as confident adults. Boys who feel that their fathers devote time, especially to talk to them about their worries, school work and social lives, almost all emerge as motivated and optimistic men. **Father involvement in children's education at age 7 predicts higher educational attainment by age 20, in both boys and girls.** For boys, early father involvement protects against delinquency in later life. The involvement of fathers exerts an influence on children's positive attitudes to school.

Father involvement is associated with good parent-child relationships in adolescence and also with later satisfactory partnerships in adult life.
ESRC Report 2001, Father involvement and outcomes in adolescence and adulthood.

1.2.2 'Early father's and mother's involvement and child's later educational outcomes'. British Journal of Educational Psychology 2004; 74: 141-53.

Father involvement and mother involvement at age 7 independently predicted educational attainment by age 20. The association between parents' involvement and educational attainment was not stronger for sons than for daughters. Father involvement was not more important for educational attainment when mother involvement was low rather than high. Not growing up in intact two-parent family did not weaken the association between father's or mother's involvement and educational outcomes. **CONCLUSION: Early father involvement can be another protective factor in counteracting risk conditions that might lead to later low attainment levels.**

Even very young children can benefit from overnight stays with their other parent.

Kelly J B & Lamb M E (2000) Using child development research to make appropriate custody and access decisions for young children, Family and Conciliation Courts Review, 39, 297-311.

1.2.3 'Father's Day: The Importance of Dads'. Dr Daniel Nettle of Newcastle University and the Institute of Neuroscience in the Journal of Evolution and Human Behaviour.

Nettle used the National Child Development Study, which traces the lives of every Briton born between 3 and 9 March, 1958. Surveys taken in the 1960s and 70s asked mothers to rate the father's involvement in his child, from "inapplicable" to "equal to the mother". These and later surveys through 2005 tracked intelligence, income, and education of the participants.

Dads who play an active part in their children's upbringing help them to be more intelligent and successful was the finding of a second study published in the journal Evolution and Human Behaviour.

With paternal investment, however, time seemed to be the most important currency. At age 11, children of highly involved fathers boasted markedly higher IQs than children with less present dads. "This is not half a point, this is a few points of IQ, on average," he says.

Inter-parental conflict decreases over time in shared custody arrangements, and increases in sole custody arrangements.

Bauserman 2002.

2. International Research

2.1 Child Custody, Access and Parental Responsibility: The Search for a Just and Equitable Standard. Erik Kruk M.S.W. Ph.D. The University of British Columbia. December 2008.

Sole maternal custody often leads to parental alienation and father absence, and father absence is associated with negative child outcomes. Eighty five per cent of youth in prison are fatherless; 71 per cent of high school dropouts are fatherless; 90 per cent of runaway children are fatherless; and **fatherless youth exhibit higher levels of depression and suicide, delinquency, promiscuity and teen pregnancy, behavioural problems and illicit and licit substance abuse** (Statistics Canada, 2005; Crowder and Teachman, 2004; Ellis et al., 2003; Ringback Weitoft et al., 2003; Jeynes, 2001; Leonard et al., 2005; McCue Horwitz et al., 2003; McMunn, 2001; Margolin and Craft, 1989; Blankenhorn, 1995; Popenoe, 1996; Vitz, 2000; Alexander, 2003).

These studies also found that fatherless youth are more likely to be victims of exploitation and abuse, as **father absence through divorce is strongly associated with diminished self-concepts in children** (Parish, 1987).

Children of divorce want equal time with their parents and consider shared parenting to be in their best interests. Seventy per cent of children of divorce believe that equal amounts of time with each parent is the best living arrangement for children, and children who have had equal time arrangements have the best relations with each of their parents after divorce (Fabricius, 2003).

A recent meta-analysis of the major North American studies comparing sole and joint physical custody arrangements has shown that **children in joint custody arrangements fare significantly better on all adjustment measures than children who live in sole custody arrangements.** Children in joint custody arrangements had fewer behavioural and emotional problems, higher self-esteem, and better family relations and school performance than children in sole custody arrangements. **The positive outcomes of joint custody were also evident among high-conflict couples.**

3. Research on the benefits of shared parenting

3.1.1 Child Adjustment in Joint-Custody versus Sole-Custody Arrangement: A Meta Analytic Review. Robert Bauserman, *Journal of Family Psychology* 2002; 16: 91-102

Children in joint custody arrangements fare significantly better on all adjustment measures than children who live in sole custody arrangements.

The fact that joint custody couples also reported less current conflict is important because of the concern that joint custody can be harmful by exposing children to ongoing parental conflict. In fact, it was the sole-custody parents who reported higher levels of current conflict.

3.1.2 'Drifting Towards Shared Residence' Smart *et al* 2003.

This small study only looked at the experiences of 30 teenagers and young adults but has shaped policy since it was published in 2003. We only mention this report because it is often incorrectly cited as calling into question the benefits of shared residence, but few who refer to the summary are aware of the diminutive and unrepresentative sample used in the underlying study.

As the authors admit, their title is confusing, in that the study was not into shared residence but the experiences of a few teenagers who were understandably unhappy with a rigid 50:50 division of time between parent's homes. The teenager's unhappiness seemed further compounded by poor parenting.

4. Changing society and the parental role



In July 2009, the Centre for Social Justice called for a change to relocation law to take better account of developments in parenting in the last 30 years. The considerations in relocation cases have remained unchanged for 39 years and the case *Poel v Poel*.^{xi}

Lord Justice Ormrod, a keen supporter of *Poel v Poel*, who cited that case law in a number of later judgments, had strong views on men being involved in childcare which appear to persist today within the Family Justice system. As recorded by his colleague, Lord Justice Dunn in his 1993 biography **'He was not sympathetic to husbands who maintained that they could bring up the children as well as their wives, saying that such men either neglected their children or gave up their jobs and became so engrossed in the children that they grew up in an unnatural environment.'**^{xii} This was an opinion which may have had some basis in 1970, but not today in the 21st century. Times change and the law must evolve to reflect real life parenting.

While these views may be understandable in people of a certain age and class, as reflective of their own upbringing, they are not representative of society today. In terms of supporting the earlier judicial opinion as well as the need for change, it is worth considering the considered opinion of His Honour, Judge Boshier, the Principal Family Court Judge of New Zealand and the risks of disrupting bonds between children and parents: **'The more dependent upon that relationship the child is for its emotional wellbeing and development, the greater the likely injury to the child from the proposed move.'** The level of harm inflicted on children by the granting of an application to relocate would have been far less in 1970. In 2009, given the statistics below and the opinion of the New Zealand courts, the risk of emotional and psychological injury to UK children is now high. Increasing paternal parenting time supports a stronger bond than would have been present previously.

In relocation cases where shared residence exists, and *de facto*, there are two primary carers with equal parental responsibility, the Court of Appeal continues to apply the same reasoning in favour of the mother.^{xiii}

How has the role of fathers changed?

4.1 'Completing the Revolution: The Leading Indications', Equal Opportunities Commission 2007, London

British fathers now undertake approximately nearly half of all childcare. Mothers recorded an average of 2 hours 32 minutes per day looking after their own children, compared with 2 hours 16 minutes by fathers.

4.2 'Working Fathers, Earning and Caring', Equal Opportunities Commission 2003, London

The amount of time that fathers of children under the age of 5 spend with them on child-related activities has gone up from less than a quarter of an hour per day in the mid 1970s to two hours a day by the late 1990s.

5. Relocation: Legislative Change

There are advantages to following the legislative changes introduced in New Zealand. The Care of Children Act 2004 has the benefit of having been tried and tested since it came into force in July 2005. These proposed revisions respect and reflect the family policy of all three main UK political parties and ensure that such policy is applied in practice in the family courts. In addition, these proposals help redress the current imbalance caused by the adherence to case law which, rather than protecting child welfare, according to a wide body of research, is likely to cause a child harm.

The precedent in relocation case law has remained unchanged in almost 40 years. The Children Act 1989 has recently enjoyed its 20th anniversary. The case for revisiting and overturning *Payne v Payne* and updating the Welfare Checklist within the Children Act 1989 is perhaps best expressed by Lord Justice Thorpe himself. **‘Very few family law decisions that are ‘principled’ decisions have a shelf-life of more than one generation. Most principles in family law are actually founded upon social policies or social assumptions made by the judges. Those assumptions as to child development or child help have to be reviewed from time to time.’**^{xiv} It has been recognised within the legal profession for some time that the courts too readily grant relocation applications.^{xv}

These proposed changes are sympathetic to Government’s agenda of removing gender based discrimination from society and re-emphasises Article 8 of the Human Rights Act 1998 in that the state should not unreasonably interfere in family life. There needs to be greater definition within the Welfare Checklist to emphasise the United Kingdom’s obligations under the United Nations Convention on the Rights of the Child.

These principles have been successfully used for four years in New Zealand and address much of the criticism that is currently directed at UK family law.

Revisions to the Welfare Checklist

It is recommended that a revision to section 1(3) of the Children Act 1989 is made as follows:

- (3) In the circumstances mentioned in subsection (4), a court shall have regard to—
- (a) The welfare and best interests of the particular child which must be the court’s paramount consideration;
 - (b) For the purposes of this section, and regardless of a child’s age, it must not be presumed that placing the child in the day-to-day care of a particular person will, because of that person’s sex, best serve the welfare and best interests of the child.

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- (c) The principles set out below which are relevant to the welfare and best interests of the particular child in his or her particular circumstances:
- (i) the child's parents and guardians should have the primary responsibility, and should be encouraged to agree their own arrangements, for the child's care, development, and upbringing;
 - (ii) there should be continuity in arrangements for the child's care, development, and upbringing, and the child's relationships with his or her family, or family group, should be stable and ongoing (in particular, the child should have continuing relationships with both of his or her parents);
 - (iii) the child's care, development, and upbringing should be facilitated by ongoing consultation and co-operation among and between the child's parents and guardians and all persons exercising the role of providing day-to-day care for, or entitled to have contact with, the child;
 - (iv) relationships between the child and members of his or her family should be preserved and strengthened, and those members should be encouraged to participate in the child's care, development, and upbringing;
 - (v) the child's safety must be protected and, in particular, he or she must be protected from all forms of violence (whether by members of his or her family, family group, or by other persons);
 - (vi) the child's identity (including, without limitation, his or her culture, language, and religious denomination and practice) should be preserved and strengthened;
 - (vii) a child must be given reasonable opportunities to express views on matters affecting the child;
and
 - (viii) any views the child expresses (either directly or through a representative) must be taken into account.
 - (ix) the range of powers available to the court under this Act in the proceedings in question.

Further revisions concerning CAFCASS Investigations and Reporting

It has been our experience while advising in a number of leave to remove and relocation cases that, prior to a judgment being made and due to resourcing problems, CAFCASS have been unable to:

- Meet with the child or seek their wishes and feelings;
- Visit the parent's homes or speak to members of the extended family;
- Visit the child's school;
- Prepare a written report for the court to consider

We believe that in any contested relocation case, there should routinely be a CAFCASS investigation and report to assist the judiciary in making an informed decision. We therefore recommend a new subsection at section 13 of the Children Act 1989 to read:

- (4) When considering an application for leave to remove or variance to existing residence or contact orders to facilitate a relocation within the jurisdiction:
 - (a) CAFCASS must carry out an investigation into the family circumstances and address the points raised in the welfare checklist;
 - (b) The investigation should include meetings with the child's extended family, school, the child in the separate company of each parent, and visits to both parents' homes;
 - (c) Following the investigation, CAFCASS must prepare a written section 7 report.

6. Relocation: Summary and Conclusion

In the case of international leave to remove, once a court has agreed to a child emigrating abroad there is no monitoring to determine the effects on the child. 90% of cases are approved by the court^{xvi}. If there are problems, we export them. There is less information available concerning judicial outcomes in internal relocation cases, but we know that the 'hurdles' that the applicant parent must satisfy are lower than if they were applying to move abroad. The likelihood is that the granting of internal relocation applications is even higher.

We now fully understand the effects on children of separation from a parent:

- A child is 40% more likely to suffer mental health problems;
- They are likely to achieve less academically;
- Children are at increased risk of emotional and behavioural difficulties in adolescence and reduced academic motivation ;
- Girls are more likely to experience psychological distress in adulthood.

Children in shared care arrangements fare significantly better on all adjustment measures than those in sole residence arrangements. By shared care, we do not mean a rigid 50:50 division of parenting time, but both parents being fully involved in childcare. Such statements, while our opinion, are fully supported^{xvii} by scientific evidence, detailed within this report.

The adverse affects of relocation go further than the ones which are identified and discussed in this report. A child will lose the familiarity of both parents' homes. They will lose their friends. They face the disruption of a change in school. They often lose their relationship with paternal grandparents who may not be able to manage long journeys to maintain the relationship. Future contact with the non-resident parent is more easily thwarted. The court's often held view that a meaningful relationship can be maintained by webcam or telephone is nothing more than an unqualified assumption.

The court's long held belief, that the denial of a mother's application to relocate would so adversely impact her psychologically as to affect her ability to provide care, has no basis in fact. That judicial opinion was challenged in the leave to remove debate by Resolution in 2005. Dr. Mark Berelowitz, an eminent and highly regarded child and adolescent psychiatrist, argued that there was no scientific basis for that opinion and that relocation was not a treatment for parental distress or depression. Stephen Cobb Q.C. made mention that the courts apply an unspoken presumption that the applicant will succeed and that the courts unduly elevate the threat of disappointment to the applicant parent should their application fail. The motion, that leave to remove is too easily granted, was upheld by 77 votes to 19. Such is the opinion of the legal profession.^{xvii}

Now that the impact on children of relocation is better understood, and a child's rights have been further defined by the United Nations Convention on the Rights of the Child, family law in this country must be updated and as a matter of urgency. To do otherwise leaves children not only at risk of harm, but makes likely that the courts are defending a position which goes counter to expert child welfare research.

These recommended legislative changes should be implemented as a matter of priority, and in the meantime, new guidance should be issued to the judiciary by Sir Mark Potter and put into practice without delay. A copy of the research findings detailed in this report should be forwarded to Family Justice Councils and dispersed to local judiciary and agencies to ensure that decisions are better informed.

I would personally like to thank Sir Bob Geldof, Pete Hughes of the Find Savannah-Jade Campaign, the members and executive of the charities for their support and to David Maclean MP for agreeing to table Early Day Motion 2059 calling for outcomes for children in family related relocation cases to be improved.

Michael Robinson

Early Day Motion 2059 (tabled in October 2009)

"That this House believes that a child's relationship with its parents requires greater legislative protection with regard to the Family Court's current application of precedent in international and national relocation cases; further believes that the Family Courts of England and Wales' position on the importance of the father / child relationship does not reflect the current authoritative research on the importance of father involvement in educational and psychological development in relocation cases; that the Courts in practice place too great an emphasis on the unsubstantiated emotional risk to the child from the mother's possible distress and disappointment if not allowed to relocate; that this emphasis over-rides all other considerations including the needs and rights of the child; and calls upon the Government to respond positively to the research report by the charity Reunite entitled Relocation and funded by the Ministry of Justice and published in July 2009."

Tabled by David Maclean, Member of Parliament for Penrith and the Borders

Supported by Peter Bottomley MP, Stewart Jackson MP, Bob Russell MP, Mike Hancock MP, Roger Godsiff MP, Peter Atkinson MP, Robert Syms MP, Patrick Hall MP, Simon Burns MP, David Taylor MP, John Hemming MP, Graham Brady MP, Howard Stoate MP, Malcolm Moss MP.

7. Statements in Support



The Find Savannah-Jade campaign strongly supports the Relocation and Leave to Remove Campaign. It is our view that the welfare of the child is not currently being taken sufficiently into account in such cases. It seems simply obvious to us that serious academic research into the effects of relocation on a child should carry considerably more weight than arbitrary judicial opinion.

The Find Savannah-Jade Campaign seeks to re-establish contact between Steve Moseley and his daughter Savannah-Jade Dawson whose mother, Fiona Gray (nee Dawson) emigrated to Australia with her in 2007. Despite her assurance in a UK court that she would help Savannah maintain contact with her father, Fiona Gray has broken all contact and Steve has not heard from his daughter since September 2007. The campaign enjoys the support of approximately 25,000 members. www.savannah-jade.org



Families need Fathers is happy to support the 'Relocation and Leave to Remove Campaign' by the Custody Minefield. The current situation where children are too easily removed from a loving parent and wider family needs to be changed to reflect parenting in the twenty first century. Jon Davies, CEO, FNF

Families Need Fathers is a social care organisation, helping parents whose children's relationship with them is under threat. We offer information, advice and support services for parents on how to do the best for their children. We are the only organisation that provides these services on a national basis.

www.fnf.org.uk

JUMP supports the campaign initiated by The Custody Minefield to re-evaluate and reconsider a new legal approach to addressing child and parent related issues impacting on relocation and leave to remove.

Campaigning for Improved Relationships Between Divorced Parents & Their Children in the Jewish Community, as well as Nationally and Internationally. Tel: 0844 3578112 (Helpline)

E-mail: info@jump-parenting.org.uk Web: www.jump-parenting.org.uk



References

- i The Centre for Social Justice 'Every Family Matters' A Policy Report by the Family Law Review (July 2009)
- ii Reunite 'Relocation' Report (July 2009)
- iii Payne v Payne [2001] EWCA Civ 166
- iv Para.29 Payne v Payne
- v Family Law Week 'International Relocation – The Reality Check' (2009)
- vi Family Law Week 'Leave to Remove (A Lawyer's all too personal view)' (2008)
- vii Gary Direnfield, MSW, RSW (2008) www.womensdivorce.com
- viii NZ Supreme Court D v S [2002] NZFLR 116
- ix NZ s.4 Care of Children Act 2004
- x The Welfare Checklist s.1(3) Children Act 1989
- xi Poel v Poel [1970]1 WLR 1469
- xii Sword and Wig: The Memoirs of a Lord Justice (1993) by Roger Dunn
- xiii News & Star 'Cumbrian Dad loses fight to stop wife moving 400 miles away with daughter' (16 July 2009)
- xiv 'Advocacy in Family Proceedings, a Practical Guide' - Family Law (March 2005)
- xv See Longrigg, The Leave to Remove Debate, [2005] Fam Law 911
- xvi *ibid* vi
- xvii *ibid* xv