

# A Legal Framework For Shared Parenting

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This document proposes a legal framework for Shared Parenting in the United Kingdom. The key points of the proposal are the following:

- The starting point for any parenting arrangement should be a presumption of equal contact, however allowing for flexibility as this document proposes.
- Establishing this clear, legal framework significantly reduces the high cost to society for funding Legal Aid, CAFCASS and the Family Courts.
- Shared Parenting Legislation can remove the discrimination in the Family Court System which frequently sends out a message that women should bear the brunt of childcare.
- This proposal also includes access for grandparents to their grandchildren.

## 1 Overview

The Shared Parenting Act is a legal initiative to enable the continuity of a meaningful parenting relationship between children and their parents following separation. The Shared Parenting Act rests on the following axioms:

- The Courts shall uphold the child's right to contact with both parents in accordance with the UN Convention on the Rights of the Child.
- The Courts shall recognise and uphold the equal importance of both parents in the child's development.
- The Courts shall not judge either parent on their perceived parenting ability.

The Shared Parenting Act introduces the Shared Parenting Order to achieve these objectives. It establishes a legal framework within which parents can focus on their children and avoid adversarial litigation. The Shared Parenting Order will provide a child with access to both of their parents, unless both parents jointly agree that it is in the best interest of the Child to come to an alternative arrangement.

Provision has also been made to ensure that Grandparents and Grandchildren can develop a meaningful relationship with each other.

## 2 The Shared Parenting Act in Practice

The Shared Parenting Act challenges outdated notions of family justice and for the first time, creates a framework that places the child firmly at its centre. The Shared Parenting Act solves many of the emotional, psychological and legal problems surrounding separation. The Shared Parenting Act provides certainty, predictability and justice to parents and children alike, at a time when they need it most.

In practice, the Shared Parenting Act establishes two new kinds of orders in the Family Courts, namely the Shared Parenting Order and the Parenting Consent Order. A third type of Order, the Specific Issue Order, already exists in current legislation. However, under the Shared Parenting Act, a Specific Issue Order will only be issued when there is either involvement by Social Services or one of the parents has a relevant criminal conviction. In the following subsections we will describe each order in detail.

### 2.1 The Shared Parenting Order

A Shared Parenting Order will grant the child access to both parents. Either parent can apply for this order at any point following separation, regardless of whether or not they have Parental Responsibility under Children's Act 1989. Obtaining a Shared Parenting Order will automatically convey Parental Responsibility to both parents.

The Shared Parenting Order provides an arrangement that takes place over a rolling two-week period, during which parents have full care of their child one week at a time. The child will benefit from a regular, meaningful relationship with both parents, and the continuity of contact will help to maintain and strengthen the bond between each parent and the child. The child will grow up feeling loved and cared for by both parents.

The bi-weekly arrangement is achieved by one parent delivering the child to school on Monday morning, and the other collecting the child on Monday afternoon. The child will then remain in that parent's care until the following Monday morning, when the other parent will collect the child from school, and so on. All holidays will be shared 50-50, with the long summer holidays split in the middle and all other holidays alternating yearly.

If the child is under school age, handovers will be arranged between the parents. Handover Hubs will be introduced to facilitate handovers where contact between the parents is a concern and can be requested by either parent. For children between 3 months of age and 1 year, it is recognised that if they are breastfeeding, separation from the Mother for more than 2 hours at a time will be neither possible nor desirable. However, for the Father, contact will be possible for up to 2 hours every other day, via a Handover Hub if necessary.

For Fathers, the contact aspect of a Shared Parenting Order will not be enforceable until the child reaches 3 months of age. However, restrictions in relation to the Child's Base (see section 2.1.1 below), will still apply to both parents.

A Shared Parenting Order will always be granted, unless

1. A parent has a relevant criminal conviction that would demonstrably impact their parenting ability. For example, a conviction for insurance fraud would not, in absence of other factors, prevent a parent from being entitled to Shared Parenting.

2. A parent's mental and/or physical state of health renders them incapable of caring for their child.

Standard of proof for the above will be the Criminal Standard of Proof, i.e. Proof Beyond Reasonable Doubt. Wild allegations will not suffice. This will discourage litigation and ensure that only those cases where there is a genuine concern of harm to the child will reach the courts. However, even under a Specific Issue Order (see section 2.3 below), the parent will have the right to spend time with their Child. This contact may be supervised, and only in extreme cases would a child not be allowed to see one or both of their parents at all.

### 2.1.1 The Child's Base

The Shared Parenting Order will require that the child is not removed beyond a reasonable commuting distance from their 'Base' by either parent, unless it is by consent of both parents. The Child's Base will be either their School, Nursery or their Registered Medical Centre for the very young, that they attended prior to separation. It will be unlawful to change the Child's Base without the consent of the other parent. As long as the child continues to be able to attend their Base, either parent is of course free to move. Remaining within a reasonable distance of the Child's Base ensures that the child stays within their habitual surroundings and within a reasonable travelling distance of both parents.

If the parents have never lived together since the birth of their child, then the Child's Base is the relevant School/Nursery/Medical Centre at the time that the Shared Parenting Order is applied for.

### 2.2 The Parenting Consent Order

When a Shared Parenting Order is deemed by BOTH parents not to be in the best interests of their child, a Parenting Consent Order may be a more appropriate option. Take, as an example, a family where the Mother is a high-earning executive and the Father is a house-husband prior to separation. If the parents decide to split, it may not be possible for the Mother to dedicate as much time to parenting as the Father following separation. The Parenting Consent Order allows for total flexibility of arrangements, but must be agreed upon by both parents. If parents are unable to come to an agreement, the Shared Parenting Order will be the de-facto arrangement following separation.

It should be noted that any Parenting Order, whether a Shared Parenting Order or Parenting Consent Order, is very likely to become the status quo, and as such both parents should be duly informed of the consequences of entering into a Parenting Consent Order.

We recognise that Shared Parenting Orders, just like any other order, could be open to potential abuse. For example, the house-husband in the above example might choose to force his ex-partner into a Shared Parenting Order in order to attempt to prevent her from continuing to pursue her career. In this case, it would fall upon the Mother to arrange for childcare when she is at work. However, because of the decrease in adversarial litigation, the animosity between separating parties is likely to be greatly reduced. We therefore expect this type of abuse to significantly decrease.

## 2.3 The Specific Issue Order

In cases where there is a proven risk to the welfare of the child, litigation may be the only avenue to an acceptable and just outcome for residence and contact.

Under the Shared Parenting Act, litigation in children's matters shall require prima facie evidence as to why a Shared Parenting Order should not be issued or should be discontinued. Litigation will only be possible where one of the parents has a relevant criminal conviction or social services are involved in the case and have genuine and demonstrable concerns. This will put an end to false allegations, because any such allegations will be dealt with under the Criminal Justice System. Any individual fabricating malicious allegations will run the risk of being criminally liable.

Any Court Order issued by the Family Courts as a result of litigation shall be designated as a Specific Issue Order under the Shared Parenting Act. Specific Issue Orders shall be made publicly available, and any reports produced by expert witnesses in such cases shall be freely examinable by the general public.

We recognise that under the European Convention for Human Rights, the privacy of litigants must be protected. To achieve this, the names of litigants and expert witnesses shall be omitted from the published orders, save for the first letter of the surname.

## 2.4 Grandparents

We recognise the positive benefits of Grandparents and Grandchildren having a relationship with each other. It is expected that most difficulties with Grandparents not having a relationship with their Grandchild will be solved by the introduction of Shared Parenting because there will be far fewer adversarial disputes and situations of non-contact between parents and children. However, for various reasons, there will always be unforeseen circumstances where some Grandparents may struggle to achieve contact. The situation is further complicated by the fact that the Grandparents themselves may be separated.

Therefore, each Grandparent shall be entitled to spend one day per quarter with their grandchild from 9am to 6pm. At the request of either party, the handover can take place via a Handover Hub. The same time restrictions apply as they do for Fathers of children aged between 3 months and 1 year i.e. no contact up to 3 months and for 2 hours at a time up to 1 year.

In cases where there is a proven risk to the welfare of the child from a Grandparent, it will be possible to apply to the Family Court for a Specific Issue Order but again, prima facie evidence shall be required and false accusations will be dismissed.

## 2.5 Implications for the Child Support Act 1991

The basic principles of CSA 1991, namely the Duty to Maintain and the Welfare of the Child continue to be applicable. However, amendments to CSA 1991 will be required in order to remove financial incentives to obstruct contact by either parent. Concepts such as 'parent with care' and 'non-resident (or absent) parent' shall be removed from the legislation. These considerations aside, we recognise that a comprehensive review of the child maintenance system is far beyond the scope of this document.

### 3 Conclusion

In this paper, we have introduced the Shared Parenting Act together with the Shared Parenting Order and the Parenting Consent Order. We have proposed a legal framework that puts the Best Interest of the Child first, simplifies contact arrangements between parents following separation, streamlines the family court process, eliminates adversarial and financially motivated litigation over children, and fully reflects the social realities of today's society.

The Shared Parenting Act will enable the Family Courts to function to their best ability, help parents to make the right decisions regarding their children and give support to families navigating their way through the difficult post-separation landscape. The Shared Parenting Act has far-reaching implications, and it truly is one of the first initiatives of its kind in the world.

The Shared Parenting Act is a reasonable initiative. Currently, family cases often take years to conclude, with results that are seldom satisfactory. We are confident that this proposal will prove helpful to the Houses of Parliament in implementing legislation that truly reflects the Best Interest of the Child. Whilst we recognise that every situation is different and there is no magic formula, we believe that the proposals contained in this document will minimise the effects of separation on families.

Under the Shared Parenting Act, Family Courts will be able to concentrate on the cases that are truly exceptional, significantly reducing the number of cases currently crawling through the Family Courts, alleviating the pressure on the Judiciary and court-affiliated organisations, reducing the legal strain on separating parents already under emotional and financial pressure, and most importantly, minimising the impact of separation on children and ensuring they receive the best possible care from both parents.

The Shared Parenting Act empowers families to flourish after separation and continue to give children love and care.