

Equal Parenting Alliance Party Briefing 3

A Presumption of Reasonable Contact?

We believe family courts should adopt the principle that, following divorce or separation of parents, there is a presumption that both parents will have *reasonable* contact with their children unless there is a *good reason* otherwise.

Clearly there is a big difference between one case in which the child and his resident mother, for instance, live a mile away from the non-resident father, and another case in which they live 300 miles away. Because of these differences of circumstances, the exact definition of reasonable contact will vary between cases.

We attach great importance to the demand for *reasonable* contact rather than just *contact*. A presumption of just *contact* is too easily dealt with by allowing, for example, one hour-long meeting per month in a supervised setting, or an exchange of Christmas cards. We believe that such levels of “contact” between a child and his other parent are simply not enough for a proper relationship to be maintained.

To those who insist that the amount of contact between child and non-resident parent be quantified – either as a percentage of the child’s time, or in terms of a number of days per year – the family law establishment replies with a by-now familiar objection: that all cases are different, and that to tie the hands of a family court by specifying a fixed amount of contact will mean that sometimes the court will not be free to decide what is best for the child in a particular case. (And in case some

of us were in any doubt about our children, we are then helpfully reminded that they are not a CD collection).

The argument that any prior specification or presumption about levels of contact to be ordered, will inevitably conflict with the overriding principle that the child’s best interests are paramount, appeals to many people. After all, you cannot ask the courts to observe *two* basic principles – one principle has to have priority over the other. And the view of the establishment is that the paramount principle has priority over everything else.

This argument, although superficially attractive, is however completely invalid, and can be easily shown to be nonsense. To see why this is so, all that is necessary is to interpret the “presumption of reasonable contact” principle not as a competing principle that jostles for supremacy over the paramount principle, but simply as an explanation of one part of what the best interests of the child *are*.

Reasonable contact with his other parent is one of the things that any child *needs*, just as he needs air, water, food, education, and protection from danger. And he needs all these things quite regardless of whether his resident parent wants him to have them or not.

An example of a principle rather closer to the original theme of bringing up children is the requirement of compulsory education for school-age children. The Education Act obliges parents to ensure their children are educated, thereby enacting a principle which is

The Best Apples

You have gone to the supermarket on an errand for your mother, who has asked you to buy the *best apples* you can find. Maybe you’re uncertain as to what she means by *best*, so you ask her: Do you want me to choose the *biggest* apples, or the *sweetest* apples? To which she then replies: The *best* apples are naturally the *sweetest* ones, regardless of their size. So now you know what to look for: sweet apples, rather than big apples.

In such a case, nobody would say that your mother has suddenly changed her mind – whereas at first she insisted upon the *best*

apples, now she is asking for the *sweetest* apples. Nobody would say that there was any conflict between the two instructions you have been given: to choose the best apples, and to choose the sweetest apples.

The first instruction was ambiguous, and the second one explained it more clearly. The second instruction did not *contradict* the first instruction, it simply *explained* what the first instruction *meant*.

Similarly, a presumption of contact does not override or contradict the welfare of the child principle; it is *in* the best interests of the child to have contact with both parents.

almost universal in countries of the developed world, and widely accepted to be entirely for the benefit of children.

No one suggests that children would be *better off*, if it were left to the resident parents to decide whether to have their child educated. There has recently been a spate of well-publicised cases in which mothers have been prosecuted for failing to ensure this, and in these cases the general view of society is that those mothers have *failed* to act in the best interests of their children.

So, it appears that the law can say to parents: *your child must be educated whether you or he likes the idea or not, because education is one of the things that children need*; and furthermore, it can make that requirement without in any way conflicting with the paramount principle.

Why therefore, is the law not able to say to parents, in exactly the same way and without conflicting with the paramount principle: *if you divorce or separate, then your child must maintain reasonable contact with both parents?*

“When it’s safe to do so”

A frequent amendment, insisted upon by those opposing a presumption of reasonable contact, is the addition of riders such as “when it is safe” to almost every phrase concerning contact.

The idea, of course, is to pretend *only they* truly have the best interests and safety of children at heart.

However well intentioned they may be, we believe these amendments are uniformly unhelpful, and do little more than promote the (sadly fashionable) climate of fear regarding contact issues.

More importantly, such amendments are already **completely unnecessary**; the *welfare of the child* paramount principle over-rides everything else and clearly precludes anything which puts a child’s safety at risk.

There is no more need to say “contact occurs *when it is safe*” than “contact occurs *unless there would be a tub of acid suspended above the child’s head*”. Both of these riders state the obvious and are covered by the paramount principle in any case.

“Good Reason Principle”

Under current family law practice, contact between a child and parent can be frustrated by the resident parent for almost *any* reason.

We believe the bond between a child and parent is fundamentally beneficial to a child; *any reason* should *not* be enough to destroy this relationship.

Family law should require a *good reason* to disrupt contact; and courts should require supporting evidence to justify it.

Of course, as we have shown, the law could say this – and it could say this without contradicting the paramount principle.

Why should it be up to one parent to arbitrarily decide *whether* they act in the child’s best interests regarding their relationship with their other parent - when they *don’t* have that choice with regard to their child being educated?

We believe a resident parent should be required to act in the child’s best interests in *all matters* concerning their welfare. Most would agree this is an important part of the role of parenting.

We believe that *neither* parent should have the right to choose whether they harm a child by denying it either education or a relationship with their other parent. The Children Act (and the way it is implemented in family courts, up and down the country, day after day), *gives* the resident parent that right; the right to harm their child if they choose.

The law and courts should robustly protect the child’s best interests in all matters and not arbitrarily ignore them when convenient. At the very least, a parent should be required to have *good reasons* for damaging a child’s relationship with their other parent.

A presumption of reasonable contact without good reason to the contrary, would remove the right of a resident parent to harm a child by denying their relationship with the other parent for no reason.

Surely, this should be *the minimum* the family justice system is aiming for?