

---

Breakthrough Britain

# The Family Law Review

*Interim Report*

## EXECUTIVE SUMMARY

**This is the Executive Summary of the Centre for Social Justice Family Law Review's Interim Report. For further information or to download the full report please visit [www.centreforsocialjustice.org.uk](http://www.centreforsocialjustice.org.uk)**

### Introduction

The final report from the Social Justice Policy Group, *Breakthrough Britain*, included a recommendation that there be:

*A review of family law conducted by a dedicated independent commission. The relationship between the law and family breakdown and legal aspects of marriage, divorce, cohabitation, parental rights and the rights of the extended family (especially grandparents) are highly complex but require consideration. We recommend that this be carried out under the auspices of an independent body such as the Centre for Social Justice.*

A review of family law is a necessary part of a concerted effort to stabilize relationships within society, because of the role the law plays in shaping expectations surrounding family life. The common thread running through this review is how the law, legal procedures and processes and ancillary functions might better support, and encourage, various beneficial institutions or pro-social norms which are in danger of being washed away. Increasing stability and encouraging commitment are key aims and, in keeping with the research findings and recommendations of its progenitor, the Social Justice Policy Group (SJPG), this review works from an underlying assumption that marriage should be supported both in government policy and in the law and that fatherlessness (or motherlessness), far more likely to occur when relationships are informal, should be avoided.

### Major Themes of the Review

#### THE IMPORTANCE OF MARRIAGE

Rather than treating marriage as a 'magic bullet', SJPG reports emphasised that the attitudes and behaviours which tend to be more associated with marriage than cohabitation e.g. future-orientation, willingness to

sacrifice/invest, greater role specialisation (although not necessarily along traditional lines) were contributors to the greater stability and better outcomes for adults and children.

Married couples are far less likely to break up than couples who live together without getting married, even after adjusting for the influence of such factors as income, age and education. Using data from the British Household Panel Survey, Kiernan found that 8 per cent of married parents and 43 per cent of unmarried parents had split before their child's fifth birthday,<sup>1</sup> a recent analysis of the Millenium Cohort Study reached similar conclusions.<sup>2</sup>

*Breakthrough Britain* therefore expressed

*...grave concern over the negative implications of imposing rights and responsibilities on cohabiting couples. Notwithstanding individual cases of apparent injustice, many cohabitees have voluntarily chosen to reject marriage with the protection it provides. The liberal argument that people should not be penalised for this choice is flawed. Attaching legal provision would be illiberal (because it imposes a contractual obligation not freely entered into) and intrusive and would encourage inherently more unstable relationships.*

#### ALTERNATIVES TO COHABITATION LAW

It concluded that if we want to encourage a high-commitment culture, it is counter-intuitive to make additional provisions, within the law, for lower forms of commitment. This review therefore questions how to raise greater awareness of the limitations and disadvantages of cohabitation and what less dramatic changes in the law, such as reform to Schedule 1 of the *Children Act 1989* (in terms of property readjustment as a different way of tacking disadvantages to children in cohabiting relationships) could achieve in terms of improving fairness, without the creation of a new cohabitation law with all its implications.

It also considers whether or not the removal of some alleged disincentives to marry e.g. the non-binding status of pre-nuptial agreements, uncertainty regarding financial provision on divorce and independent taxation, will effect a shift towards marriage.

#### ASSISTED REPRODUCTION AND ITS IMPLICATIONS FOR PARENTAGE

We will also review how reproductive technology has facilitated the trend towards legal and social rather than biological parenthood. Children still need to know where both parts of their genetic material have come from if their identity is not to be compromised, and benefit greatly from the engagement in their upbringing of parents of both sexes.

The Human Fertilisation and Embryology Bill contains proposals which are of central concern to the Family Law Review therefore we compiled an earlier report, *Fathers Not Included*,<sup>3</sup> to address some of the issues it raises on family and parenting, as well as to highlight other related issues to which we are giving ongoing consideration.

This report opened up a necessary debate on how best to safeguard the interests of children born with the help of donor-assisted reproduction. It concluded that the needs of childless adults are disproportionately represented in the HFE Bill. It accommodates tiny percentages of the population, by insisting that parental status be recognised on the sole basis of adults' intentions. Whilst the law has to take cognisance of the

---

3 1 Kiernan K, 1999, 'Childbearing outside marriage in Western Europe', *Population Trends*, Vol 98, pp 11-20

2 See Social Policy Justice Group, 2006, 'Fractured Families', Volume 2 of *Breakdown Britain*, Centre for Social Justice

3 Centre for Social Justice, 2008, *Fathers Not Included: A Response to the Human Fertilisation and Embryology Bill*  
<http://www.centreforsocialjustice.org.uk/client/downloads/FathersNotIncluded.pdf>

implications of new assisted reproduction technology, nothing should be codified which will diminish or discount the importance of biological parenthood: motherhood and fatherhood.

Recommendations include a call for a thorough public investigation of the implications and applications of the broader welfare principle to assisted reproduction (including the need for a father); more research to be carried out on children born in alternative household structures before changes in the law are made and greater transparency in the birth registration system.

#### POST-SEPARATION SUPPORT

Promoting stability and commitment will also guide all the work we will be doing on post-separation issues as we consider how the law can support families to rebuild their lives when a relationship is irredeemably broken.

Separated partners often struggle to come to amicable arrangements for the care of children and the division of assets, with insufficient support to navigate the legal maze. A fragmented system, with uncoordinated services, can lead to considerable additional stress and cost to the state. Conflict resolution is unnecessarily overly reliant on the court service and the legal profession and new approaches are needed to implement alternative dispute resolution services, such as conciliation and mediation.

The review has conducted a study visit to Australia to look at their Family Relationship Centres. These offer an early intervention strategy to assist parents going through separation when most have not yet embarked upon an adversarial path and legal proceedings. The policy potential of the Australian model will be reviewed alongside the challenges facing our legal aid system.

#### CONFLICT OVER CONTACT

*Breakthrough Britain* attracted a large amount of evidence from many parents (especially fathers) who were dissatisfied with their legal position following divorce and separation. The parent with care of the child(ren) is often unhappy with the level and reliability of maintenance payments from the non-resident parent, whilst the latter often wishes to take issue with the level and reliability of contact with the child(ren). Breaches of contact orders made by the courts in favour of the parent without residence are not easy to remedy. The legal position of non-resident parents will be considered as well as the extent to which arrangements for 'sharing' care of the children should take account of the amount of social, educational and personal disruption a child or young person can reasonably be expected to bear: important issues around presumption of contact and presumption of the welfare of the child.

We are also aware that Child Contact Centres continue to be an invaluable resource for children and parents who would otherwise find it very difficult to develop or maintain relationships with important family members. We will assess the service provided by contact centres, the length of waiting lists and whether there is need for more financial support, as part of our review.

#### EXTENDED FAMILY

There has been a fresh realisation of the important roles played by other family members, especially grandparents, within the family framework. What (very) little law there is on the subject of grandparents rights, is contested by a number of lobby groups, who perceive current injustices in the system.

For example, if a grandparent wishes to make an application for contact with a grandchild, the Applicant will firstly need to obtain leave of the Court under Section 10(9) of the *Children Act 1989* (unless they are exempt under Section 10(4) or 10(5)). This two-stage approach can cause delay and upset to many grandparents, some of whom will have been very actively involved in their grandchildren's lives.

### VULNERABLE CHILDREN

Following on from the recent Centre for Social Justice report *Couldn't Care Less*,<sup>4</sup> we will give attention to the role of the extended family when children are in the care of the Local Authority. Claims that children are being placed for adoption without the knowledge of grandparents who have been closely involved in their grandchildren's lives require consideration, alongside proposals for stricter implementation of the 'need to consult' requirements from the *Children and Adoption Act 2002*. We will also consider how Special Guardianship Orders impact the rights of grandparents and extended family members and whether these Orders have enhanced the stability of these often very vulnerable children's lives.

The safety and interests of the child are clearly paramount and often courts have to remove a child from drug-misusing parents. However, this may not always be the best option and we want to consider alternatives to what can be a harsh and arbitrary mechanism, such as the Drugs Court model being piloted at the Inner London Family Proceedings Court.

### CONCLUSION

A review of family law is, by necessity, a major undertaking. The specific areas of concern, as outlined in this report, are not comprehensive but our intention is to progress ongoing debate as well as recommend statutory changes in laws, with the ultimate purpose of strengthening commitment and stability in family life in the UK today.

The final report from the Family Law Review will be published in Spring 2009.

---

4 Downloadable from <http://www.centreforsocialjustice.org.uk/default.asp?pageRef=264>

---

# Members of the Housing and Dependency Working Group

**Dr Samantha Callan** (*Chair*), Research and Policy Consultant, Honorary Research Fellow, University of Edinburgh

**Professor Brenda Almond**, Emeritus Professor of Moral and Social Philosophy

**Rebecca Bensted**, Barrister and Lecturer at BPP Law School

**Benjamin Fry**, Psychotherapist and BBC expert

**Helen Grant**, Family Law Specialist, Founder of Grant's Solicitors

**David Hodson**, International Family Law Specialist, Mediator and Arbitrator

**Sheela Mackintosh**, Barrister and Founder of Divorce & Family Law Information Service

## Consultants

**Dr Andrew Bainham**, Fellow and Reader in Family Law, Christ's College, Cambridge

**District Judge Nicholas Crichton**, Inner London Family Proceedings Court

**Professor Patrick Parkinson**, Sydney Law School, University of Sydney, Australia

**Philippa Taylor**, independent consultant on bioethics and family issues

## Patrons of the Family Law Review

**Lady Elizabeth Butler-Sloss** of Marsh Green

**Baroness Ruth Deech** of Cumnor

---

# About the Centre for Social Justice

The Centre for Social Justice aims to put social justice at the heart of British politics.

Our policy development is rooted in the wisdom of those working to tackle Britain's deepest social problems and the experience of those whose lives are affected. Our working groups are non-partisan, comprising prominent academics, practitioners and policy makers who have expertise in the relevant fields. We consult nationally and internationally, especially with charities and social enterprises who are the champions of the welfare society.

We are not a typical Westminster 'think-tank'. In addition to policy development, we foster an alliance of poverty fighting organisations that reverse social breakdown and transform communities.

We believe that the surest way the Government can reverse social breakdown and poverty is to enable individuals, communities and voluntary groups to help themselves.

The CSJ was founded by the Rt Hon Iain Duncan Smith in 2004, as the fulfilment of a pledge he made to Janice Dobbie, a mother whose son had recently died from a drug overdose after he was released from prison.

Chairman: Rt Hon Iain Duncan Smith MP

Executive Director: Philippa Stroud



The Centre for Social Justice

9 Westminster Palace Gardens, Artillery Row, London SW1P 1RL

t. 020 7340 9650 • e: [admin@centreforsocialjustice.org.uk](mailto:admin@centreforsocialjustice.org.uk)

[www.centreforsocialjustice.org.uk](http://www.centreforsocialjustice.org.uk)