

# Childhood casualties of the family courts

Fathers still have the odds stacked against them when it comes to custody battles in the family court system, but are warring parents forgetting what and who they are fighting for?

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□ A father and son go fishing. Up to 40% of divorcing dads in Britain lose all contact with their children within two years of families splitting up.

When Paul returned home from a six-month tour of duty in Afghanistan, he found his key no longer fitted his front door.

"My wife had changed the locks on the house I was paying the mortgage on, and my kids were inside with her new bloke," he said. "I can't tell you what I felt, trying to make sense of it all. It was a bad dream. She had a lawyer lined up to talk about money and they seemed stunned when I said I wanted contact.

"I had kids because I wanted to be a dad. I am a dad, not a sperm donor."

His little boys were then aged three and 18 months. He hasn't seen them for almost two years and struggles on with his legal battle.

In the past, public sympathy may well have rested with the court, assuming it was doing its best for the children. But now there is growing evidence that family law has spectacularly failed to keep up with the changing role of men within the home and that children are suffering as a result. Judges are accused of stereotyping, making a legal presumption in favour of the mother and awarding meagre access rights to dads.

With the maturing of the "men's movement" into more child-centred lobbying and support groups, and with rising numbers of divorce lawyers moving into mediation work and away from adversarial courtrooms, there is a growing understanding of [the raw deal many fathers](#) – and children – have been getting from the secretive British family court system.

This week, the consultation period will close on the family justice review, commissioned in part because of money (the present legal system costs the state more than £800m a year), but also intended to make the process quicker, simpler and fairer.

"Fathers and grandfathers regularly tell us that they do not feel well served by the current system," admits the Ministry of Justice in its introduction to the review, which will be heard by a panel of experts and chaired by pensions watchdog David Norgrove. Final recommendations are due by autumn 2011.

Many professionals, including Resolution, a collective of almost 6,000 lawyers across the country who are committed to nonconfrontational divorce, hope it will usher into law the

concept of shared parenting, and back mediation, not courtrooms, as the place to settle disputes over children.

It was in a speech to Families Need Fathers last Sunday that Sir Nicholas Wall, president of the family division of the high court and Britain's most senior family judge, warned that parents harm children by using them as "the battlefield, the ammunition" during divorce proceedings.

Families Need Fathers is at the forefront of a shift in tone in fathers' rights – away from the notorious stunts of Fathers 4 Justice, which involved grown men dressed as superheroes unfurling banners on public monuments, towards a professional lobbying approach, deploying reasoned argument and concern for the child.

A measure of its mainstream status is that David Blunkett and novelist Louis de Bernières are among the group's patrons.

"He [Wall] was bang on the button," said Liz Edwards, vice-chair of Resolution, who as well as being a family lawyer is a trained mediator who favours a "round the kitchen table" approach for couples who are splitting up. "We find you can stop the process becoming a huge conflict if you give people information," she said. "They won't even talk about custody and courts. They will be focusing on the children. Mediation can take the heat out of a time when people are in a lot of pain, make people see they need to focus on the child.

"A lot of people cannot afford to litigate over children and end up having to sort things out all by themselves and do it well. Very wealthy people who have nothing to lose financially go through all their issues in the courts.

"Ultimately, it's the children who will look at their parents and the job they did and they can be very critical. Parents have to realise that what they are doing at this point may well decide their future relationship with their children."

She said it was impossible to ignore the part that fathers' pressure groups had played in highlighting issues previously hidden behind the secretive doors of the family courts.

"Fathers being more involved has brought new problems. Some children now have to live with parental conflict, instead of living with the sense of rejection that came when the father walked away.

"We have to decide what we want for our children. Mediation is not about rights as much as responsibilities to the children. It's asking people, 'can you put your children first?' "

The government estimates that one in four children has separated or divorced parents. Despite all the evidence that children thrive best when they enjoy the support and love of two parents, only about 11% of children from broken homes will go on to spend equal amounts of time with each parent.

A significant number of fathers, some estimate as many as 40%, will within two years of the split lose all contact with their children. Previously this had been seen as a sign of male fecklessness, but now it is also being recognised that dads are being pushed away, not only by

the residual conflict with ex-partners, but also by a legal system that works against them maintaining relationships with their children.

"A lot of our members are not men with great careers but ordinary men who go out to work in order to bring home money for their families. When they lose that family, everything breaks down for them. We have had five suicides so far this year," said Mike Kelly, spokesman for Real Fathers For Justice, distinct from Fathers 4 Justice.

"It was seen as comical and that wasn't the message we wanted out there. Fathers and grandparents were suffering. It had been an in-your-face campaign, but it was time to move on and reflect the seriousness of the issue that was seeing us getting suicidal phone calls from fathers in a spiral of depression that they couldn't see a way out of."

At the time, he says, "there was no political will to stop the gravy train running", but the group had helped to shine a "public light" into the family courts. "But we can't take credit until change has happened, and judges are vastly behind the times and parents are being forced in front of them like criminals. All they've done is fall out of love. One isn't guilty and the other innocent."

Ian Julian, 49, is one of the tiny percentage of fathers in the UK to have won a shared residency court order for his son, now aged 16. But that was pared away into alternate weekends when his ex-wife sent their son to boarding school against Julian's wishes. He has had to move four times to follow the house moves of his former wife.

"When I first went to a lawyer, she told me I had no chance of anything, but I was prepared to go to 100 lawyers to find one who would take my case," he said.

Julian now works as a "McKenzie friend", someone who gives moral support in court to a litigant who can't afford legal representation, and is a trustee of Families Need Fathers.

"I've heard a judge call a man 'possessive' for wanting more than two hours a week, and others make 'no contact' orders on hearsay evidence," he said. "I've known mothers taken back to court for ignoring contact orders, but nothing is done. Bad behaviour isn't just tolerated, it's encouraged. Some of the judges I have sat in front of have traditional values along the lines of a woman's place being in the home. But it's not the experience of the average British family and a father seeing a child once every two weeks isn't a meaningful relationship."

For modern fathers, expecting and expected to be far more involved with childcare than perhaps their own fathers were, it can come as an enormous shock when they hit a legal system running on a whole different set of presumptions.

"One weekend in a fortnight is what's commonly awarded and it's not a meaningful time," said Adrienne Burgess, director of research at the Fatherhood Institute. "It allows fathers to drift out of their children's lives. If we want to keep men in children's lives we might have to work a lot harder. High-quality relationships with their mother and their father is what is successful for children after separation. Having one without the other doesn't help them much."

But Burgess makes the point that shared parenting requires more than just more enlightened judges. "It's interesting that in the past 30 years, men's involvement with their children has gone up 800-fold, but there are fewer father-headed lone-parent families than ever as it's overwhelmingly mums who get the children.

"The courts may prioritise mothers to a ridiculous extent, but it's also going to be hard for us women to give up. True shared parenting means not getting your own way, which is tough. When the child might not run to you first at the school gate, that's hard," said Burgess.

Without doubt the present system seems to be serving no one very well and certainly not men like Paul. He received an up-to-date photograph of his children a few months ago, posted anonymously. "I'd like to think it was my wife," he said. "She knows we both love them like nobody else ever can."