



**A RESPONSE BY
THE CHARTERED INSTITUTE OF LEGAL
EXECUTIVES**

**Co-operative Parenting Following Family
Separation: Proposed Legislation on the
Involvement of Both Parents in a Child's Life**

September 2012

Introduction

1. This response represents the views of the Chartered Institute of Legal Executives (CILEx) as an Approved Regulator (AR) under the Legal Services Act 2007 (hereinafter “the 2007 Act”).
2. CILEx engages in the process of policy and law reform to ensure adequate regard is given to the interests of the profession and in the public interest. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform policy and law reform discourse relating to justice issues.
3. As it contributes to policy and law reform, CILEx endeavours to ensure adequate regard is given to human rights and equality considerations and to the need to ensure justice is accessible for those who seek it. Where CILEx identifies a matter of public interest which presents a case for reform it will raise awareness of this within Government and advocate for reform.

Co-operating Parenting

4. The stated aim of the proposed changes to the Childrens Act 1989 (the 1989 Act) as set out in the above consultation are “*to reinforce the expectation generally that both parents are jointly responsible for their children’s upbringing*” and the Government believes that children should benefit from the continued involvement of both their parents “*where it is safe and in their best interests*”.
5. CILEx is of the view that co-operative parenting as a concept is a good idea for the family courts. We welcome the intention to encourage the involvement of both parents in the life of children following separation. We particularly welcome the emphasis on acting in the best interests of the child. In the event of conflict, it is essential that the child’s needs are placed above its parents. However, the reality is that the concept of co-operative already exists and is a factor in the court’s decision-making powers by virtue of the welfare principle contained in the 1989 Act.

6. Judges are experienced in judging each case on its merits and ensuring the welfare of the child is paramount. Clearly in the majority of cases that will involve the children having as full a relationship as possible with both of their separated parents. However, giving statutory authority to the concept of co-operative parenting may well have the advantage of dispelling any perception that the family courts have an inbuilt legal bias against fathers.
7. The objectives of the proposals as set out in the consultation would be best served by the adoption of Option 1; the 'Presumption' approach. It is clear and easy to understand and can also be rebutted if the court is of the opinion that a parent's involvement may not be consistent with the child's welfare.

Enforcement Action

8. CILEx agrees in principle that a tougher approach is needed if either parent deliberately disobeys Orders made by the family court that are in the best interests of the child. That said, punitive enforcement action must not become the central focus of a case. This, in any event, may not be in the best interests of a child. However, effective enforcement action also requires resources which may compete with the government's other public spending commitments.

Mediation

9. CILEx applauds the government's positive proposals in relation to mediation. No one disputes the value of mediation or the fact that in cases that do go to court, the court can have an extremely detrimental impact on families, including children. That said, relying wholly on mediation is not always an option. Mediation is not a panacea. The Ministry of Justice has recognised this in the past and is only too aware of the limitations of mediation. It must be borne in mind that mediation needs to be under the shadow of the Court.