



PE1570/C

Dear Ms Robinson,

PE 1570 / Response by the Family Law Association.

I confirm I am writing on behalf of the Family Law Association (F.L.A.) in response to the above petition.

I confirm our membership comprises of solicitors and advocates who represent clients who require assistance to make arrangements for the care of their children as a result of the breakdown of the relationship between the parents. Our members are also on occasion instructed by children in such cases or appointed by the court as curator ad litem to the child if the court deems such an appointment necessary to protect the welfare of the child. Many of our members are accredited by the Law Society as Specialists in Family Law and Child Law and have training in methods of resolving such disputes using Alternative Dispute Resolution methods including Mediation, Collaboration and Arbitration. The aim of our members is to assist parties to resolve the matter by agreement, in the best interests of the children, without recourse to court proceedings. Unfortunately, parties are sometimes unable to resolve the matter by agreement and court procedure will be necessary. Our members can be instructed to represent either the resident parent or the non-resident parent and therefore have experience of the issues involved for both the parent seeking contact with the child and the parent seeking to deny contact.

The concern of the Family Law Association in relation to this petition is that the emphasis appears to be focused on the rights of the parents rather than the welfare of the child. The focus of the relevant legislation currently is the welfare of the child as the paramount factor to be considered by the court when making decisions about contact and residence arrangements for children and the F.L.A is of the view that the welfare of the child should continue to be the paramount consideration for the court in such cases. The court is also required to allow the child the opportunity to express his or her views on the issue of contact and residence arrangements and take account of those views having regard to the age and maturity of the child. If, however, the court is required to ensure that the resident parent cannot stop the non-resident parent from having contact with his or her child this gives rise to the concern that the welfare of the child may no longer be the paramount consideration.

Ultimately, the decision as to whether contact is in the best interests of the child requires to be made by the court having regard to all of the relevant facts and circumstances of the individual case. Such facts and circumstances may vary greatly from case to case. An experienced member of the judiciary will require to weigh up the facts and circumstances of the case and attach appropriate weight to any

information placed before the court which may include reports available such as a child welfare report (formerly known as a bar report) or a report from a relevant expert witness. In cases in which contact has been awarded by the court but is being refused by the resident parent the court currently has powers available to it to address this issue. In some cases it may not be in the interests of the child to place an onus on the court to ensure that the resident parent cannot stop the non-resident parent from having contact with the child and such an issue is, therefore, best left to the discretion of the court.

There is a concern among some of our members that the court should be aware of issues such as parental alienation in such cases and the F.L.A has previously expressed the view that it would be appropriate for specialist members of the judiciary with experience and training in all issues relevant to family law, child law and the welfare of the child to deal with such cases.

I hope this response is of assistance.

Yours Sincerely,

Margaret Carlin
Vice Chair
Family Law Association Committee