

*These notes refer to the Children and Families Act 2014
(c.6) which received Royal Assent on 13 March 2014*

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

ANNEX A – FURTHER DETAIL ON FAMILY JUSTICE PROVISIONS:

WELFARE OF THE CHILD: PARENTAL INVOLVEMENT

721. A process map and examples are set out on the following page in order to further explain how the presumption is expected to fit with the decision making process.
722. Below are five example scenarios included to illustrate how the court might apply the presumption in practice. The purpose of these examples is to explain how the presumption is expected to fit with the decision making process and the result reached by the court in each case would of course depend entirely on the facts of the particular case. These examples are in no way intended to suggest that a particular decision should be reached in a particular case.
723. The following fictitious examples are included in order to illustrate how the court might apply the presumption in practice. The purpose of these examples is to explain how the presumption is expected to fit with the decision making process and the result reached by the court in each case would of course depend entirely on the facts of the particular case. These examples are in no way intended to suggest that a particular decision should be reached in a particular case.

EXAMPLE 1

724. Parent A and Parent B are married and have one child together. Parent A left the marital home and Parent B refuses to let Parent A see their child. Parent A wants to be able to see the child at the weekends. Parent A applies for a child arrangements order that sets out that the child should stay over with Parent A from Saturday evening until Sunday morning.
725. Each parent is treated by the court as being able to have safe involvement with the child as no concerns are raised that Parent A or Parent B pose a risk of harm to the child. The presumption therefore applies in respect of each parent and the court has to presume that it will further the welfare of the child for Parent A and Parent B to be involved in the child's life.
726. Parent B is very hurt and upset that Parent A left the marital home and feels that by leaving the home, Parent A has forsaken any "rights" to the child. Parent B, however, does not allege that it would not further the child's welfare for Parent A to have involvement in the child's life.
727. The court has evidence before it that the child had a very good relationship with Parent A before Parent A left the marital home. The court also has evidence relating to the child's wishes and feelings that the child wants to see and stay with Parent A.
728. The presumption stands in respect of both Parent A and Parent B. The court makes its decision, weighing the presumption alongside the other considerations in section 1 of the Children Act 1989, with the child's welfare remaining at all times the court's paramount consideration.

EXAMPLE 2

729. Parent A and Parent B are married and have one child together. Parent A left the marital home and Parent B refuses to let Parent A see their child. Parent A wants to be able to see the child at the weekends. Parent A applies for a child arrangements order that sets out that the child should stay over with Parent A from Saturday evening until Sunday morning.
730. The court receives a section 7 "welfare report" from the Cafcass officer that Parent B has suffered continual emotional abuse at the hands of Parent A and that such abuse was witnessed by the child and distressed the child. The court decides that it is not able

to decide whether Parent A can be involved in the child's life without causing a risk of harm, without hearing further evidence.

731. The court hears evidence regarding the emotional abuse and the effect that it has on the child. It also hears that the child wants to see Parent A and has a very good relationship with Parent A's mother (Grandmother A) who is on good terms with Parent B. The court decides that Parent A could have involvement in the child's life that does not pose a risk of harm if the child has indirect contact with Parent A or contact with Parent A at Grandmother A's house in a situation where Parent A does not come into contact with Parent B (so Grandmother A could collect the child to take home and Parent A would visit at Grandmother A's house).
732. The presumption therefore applies and the court has to presume that it will further the welfare of the child for Parent A to be involved in the child's life. Parent B is very scared of Parent A as a result of years of emotional abuse. Parent B does not, however, allege that it would be contrary to the child's welfare for Parent A to have any involvement with the child. Parent B would prefer that Parent A has indirect contact only of the nature of occasional letter writing. The court has evidence before it that the child often used to spend time at Grandmother A's house when Parent A used to take the child to visit her and that the involvement by Parent A in the child's life in that context was found enjoyable by and rewarding to the child.
733. The presumption stands in respect of both Parent A and Parent B. The court makes its decision, weighing the presumption alongside the other considerations in section 1 of the Children Act 1989, with the child's welfare remaining at all times the court's paramount consideration.

EXAMPLE 3

734. Parent A and Parent B are married and have one child together. Parent A left the marital home and Parent B refuses to let Parent A see their child. Parent A wants to be able to see the child at the weekends. Parent A applies for a [child arrangements order] that sets out that the child should stay over with Parent A from Saturday evening until Sunday morning.
735. Parent B alleges that Parent A has a history of emotionally and physically abusing Parent B and the child. Parent B alleges that Parent A cannot be involved in any way in the child's life without posing a risk of harm to the child. The section 7 welfare report from Cafcass confirms that this is the case and confirms that Parent A has caused such harm to the child in the past that the child feels extremely distressed at the thought of any contact with Parent A. There is also an allegation before the court that Parent A has sent the child threatening letters which also contain abuse levelled at the child. Parent A disputes this account. The court decides, after a consideration of all the evidence, that the prospect of any contact with Parent A would pose a risk of harm to the child and concludes that it is probable that even indirect contact in the form of letter writing would harm the child. The court therefore decides that the presumption does not apply.
736. Parent A's lawyer argues that Parent A has rights under Article 8 of the ECHR which should mean that some form of contact should be ordered. The court balances the Article 8 rights of Parent A against those of the child and Parent B and follows Strasbourg jurisprudence which holds that when there is a conflict between Article 8 rights, the child's rights prevail.
737. The court makes its decision, weighing the fact that the presumption does not apply to Parent A alongside the other considerations in section 1 of the Children Act 1989, with the child's welfare remaining at all times the court's paramount consideration.

EXAMPLE 4

738. Parent A and Parent B are married and have one child together. Parent A left the marital home and Parent B refuses to let Parent A see their child. Parent A wants to be able to see the child at the weekends. Parent A applies for a child arrangements order that sets out that the child should stay over with Parent A from Saturday evening until Sunday morning.
739. Each parent is treated by the court as being able to have safe involvement with the child as no concerns are raised that Parent A or Parent B pose a risk of harm to the child. The presumption therefore applies and the court has to presume that it will further the welfare of the child for Parent A to be involved in the child's life.
740. The child is 15 years old and the court has before it a section 7 welfare report that sets out that the child does not want to see Parent A or have any contact with Parent A as Parent A finds it difficult to come to terms with a recent declaration from the child that the child is gay and Parent A has refused to acknowledge that the child is gay. The child has expressed a strong wish to be able to explore issues of sexuality and feels that any contact with Parent A would inhibit this. The court decides that at the moment the child's welfare will not be furthered by involvement with Parent A and the presumption is rebutted.
741. The court makes its decision, weighing this factor alongside the other considerations in section 1 of the Children Act 1989, with the child's welfare remaining at all times the court's paramount consideration.

EXAMPLE 5

742. Parent A and Parent B were married and had a child. Their marriage has subsequently broken down, and the child lives with Parent B and has regular contact with Parent A. Parent A applies for a child arrangements order that sets out that the child should live with Parent A full time and alleges that Parent B poses a risk of harm to the child.
743. Parent A claims that Parent B has been verbally and physically abusive to the child on several occasions. The court hears evidence of Parent A's allegations, which are supported by other witnesses.
744. The court is of the view after considering the evidence that Parent B poses a risk of harm to the child. The court considers that despite the risk of harm presented by the current arrangement, so long as Parent B is not left alone with the child, it would be possible for Parent B to continue to have some form of involvement in the child's life that would not expose the child to a risk of harm, such as indirect or supervised contact, accordingly the presumption applies in respect of parent B and the court presumes that the child's welfare would be furthered by such involvement.
745. There is no evidence to suggest that Parent A poses any risk of harm to the child, in fact there is a strong relationship between the child and Parent A. On that basis the presumption stands in respect of Parent A and the court presumes that the child's welfare would be furthered by the involvement of Parent A in the child's life. There is no evidence advanced by Parent B to suggest otherwise.
746. The presumption stands in respect of both Parent B and Parent A. The court makes its decision, weighing the presumption alongside the other considerations in section 1 of the Children Act 1989, with the child's welfare remaining at all times the court's paramount consideration.