Clerk of the Public Bill Committee Courts and Tribunals Bill

House of Commons

London

SW1A 0AA

Cc:

Rt Hon Nick Timothy MP (Shadow Secretary of State for Justice)

Lord Wolfson of Tredegar KC

Rt Hon Sarah Bool MP

15th March 2026

Subject: Written Evidence Submission – Amendment to Courts and Tribunals Bill: Duty to Promote Safe and Substantial Co-Parenting (Replacement for Repealed s.1(2A)–(2B) Children Act 1989)

Dear Clerk and Members of the Public Bill Committee,

As an experienced professional in statistical inference, with direct experience of private family law proceedings, I submit this written evidence on the Courts and Tribunals Bill.

The Courts and Tribunal Bill's repeal of the Presumption of Parental Involvement (Children Act 1989, s.1(2A)–(2B)) in Clause 17 has been presented as addressing the scope for the family court system to miscarry and produce unsafe outcomes. The Review after which it follows, proposed to do this by addressing an alleged 'pro contact culture'- however, it freely admits that has no rationale of how repeal of the Presumption is supposed to bring about the desired improvement.

I became involved with this topic when I read the Review of the Presumption of Parental Involvement and discovered a shocking critical flaw, one so basic that it casts significant doubt on the fundamental applicability of that Review.

Note that the Review mentions the importance of shared parenting only quite briefly, raising it in order to dismiss it. The Review does acknowledge that "The evidence reviewed was clear that, where there is no risk of harm to the child, involvement of both parents following separation generally had a positive impact on child welfare." However, apparently: "Studies generally found that lower levels of fatherchild involvement were associated with worse child welfare outcomes. However, many of these studies did not consider family characteristics or the experiences of children. Where studies did control for relevant characteristics, such as family income, exposure to parental conflict, or the quality of the parent-child relationship, the difference in child welfare outcomes between children living in shared care arrangements and those living in sole care arrangements disappeared.". An astounding finding, to anyone in the field.

This claim is based on a later section in which the consultant does offer a caveat about how 'sole care' might have been defined, but that does not seem to have landed with the Review authors in their summing up.. The claim that shared-care benefits disappear after controlling for confounders (p. 29 of the Review), cites only two references: Steinbach & Augustijn (2022) and Steinbach et al. (2020). However, this is a mistaken citation. The 2022 study compared intensities of joint physical custody (JPC) e.g. 50/50 vs 70/30 – among families already in shared arrangements. It included no 'sole care' group at all, as we in the UK would understand 'sole care'.
Since Professor Steinbach's work is the sole citation for the revolutionary claim that shared care may not be important, I have obtained her views. An extract of her remarks follows:

> <u>This seems indeed a wrong conclusion that there is no benefit to sharing care! …</u>
> It is always very difficult to explain social science results to people who are not used to them. Without longitudinal data, we can't say anything about causality... This is why we always write that we can only say something about associations.. When we show that the differences between SPC and JPC disappear after controlling for a set of variables, we just can say that there are obviously differences between SPC and JPC families, e.g., regarding relationship quality. We do not know if JPC leads to better relationships or if better relationships lead to JPC. There is plenty of research showing that contact with both parents is beneficial. Some groups in Germany want legal regulatons changed so that JPC (the 50/50 arrangement) becomes the default. However, children can also be well off in SPC. ...
> <u>But I would say (except for violence, of course), the contact with both parents is the baseline.</u>

I enclose the full email exchange with Professor Steinbach (October–November 2025) for complete context and verification.
There are other concerns with how hierarchical regression has been understood by the Review authors but the core takehome here is that my correspondence with Professor Anja Steinbach, the author being cited by Alma Economics, revealed that her work had been grossly misrepresented.

Furthermore, note that there are numerous other references which the authors could have noted, which demonstrate in depth the importance of having a significant role for both parents, and some meta-analyses which also find that JPC (50/50) does lead to further improvements regardless of controls. (e.g. Nielsen 2018).

Without this fundamental misunderstanding, the Review authors would have had to set out why the imagined "pro-contact culture" would not be a good thing. The Review completely ignores a whole side of the issue, on the strength of a huge mistake.

I have acquainted the Secretary of State for Justice and Baroness Levitt KC with my findings concerning the Review but I did not receive a response. Rather, the legislation has now reached the present phase, indicating that in any event, the Government is committed to pursuing this as a priority and not delaying.

I now have a proposal to put forward, that Parliament might use this opportunity to actually make improvements - just not via an ephemeral and unlikely, or damaging, approach. There is an alternative approach to the issue, which is bring about reforms with an actual mechanism for addressing the types of miscarriages that the Government is trying to eliminate, to actually improve results.

This proposal is for an Amendment that will replace a weak, poorly-applied presumption with an enforceable duty that delivers both stronger safety mechanics in high-risk cases and a clear expectation of substantial shared parenting where safe. The approach is mechanical, not cultural: mandatory triggers, timescales, and escalation paths rather than hoping courts will shift their mindset.

The following elements are recommended:

Delivering for high-risk cases

Serious case reviews and public inquiries have repeatedly identified the same pattern of systemic failure in private family law: credible risk indicators accumulate during proceedings but trigger no protective response, because the current framework lacks mandatory escalation mechanics. The following reforms address this directly:

1. Mandatory interim safeguards on credible risk indicators.

Where there are credible allegations of serious harm (e.g. threats to kill, history of violence, or child disclosures of fear), unsupervised interim contact must not proceed until an initial risk screen has cleared it. Under the current system, unsupervised contact routinely continues while Cafcass reports remain incomplete, sometimes for months. This is a predictable source of avoidable harm: if a risk indicator is serious enough to warrant assessment, it is serious enough to warrant interim protection pending that assessment.

2. Threatening behaviour toward professionals triggers immediate escalation.

Any behaviour causing a professional reasonable concern for their physical safety must trigger an automatic safeguarding referral and a recommendation to suspend unsupervised contact pending review. A person who is a physical threat to an adult professional in a controlled setting is not someone who can be assumed safe with children. At present, such incidents may be noted internally but carry no mandatory consequence for the contact arrangements. This is an obvious mechanical gap (one which applied in the Throssell case) : a clear danger signal is observed, documented, and then ignored by the system because no protocol requires action.

3. Cafcass safeguarding recommendations carry binding interim effect.

Where a Cafcass officer identifies credible risk and recommends protective measures, that recommendation takes effect immediately and remains in force until the court reviews the matter. This formalises what is already practical reality—magistrates defer to Cafcass on safeguarding—and closes the gap where a professional's concerns sit in a file while contact continues unchanged. It is analogous to existing emergency protection powers available in public law, extended to cover those private proceedings where children face equivalent risks.

4. Strict timescales for assessment in flagged cases.

Initial safeguarding screening should occur within 14 days of referral. Full risk assessment or s.7 report within 6 weeks maximum in high-risk flagged cases, with power to order expedited private or independent assessment where Cafcass backlog would otherwise prejudice the child's welfare. Delay enables harm in both directions: continued unsafe contact where risk is real, and entrenchment of alienation where it is not.

5. Parent risk screening prioritised in flagged cases.

Where risk indicators are present, professionals should assess the alleged risky parent's demeanour and history before proceeding to interview children, reducing exposure risk and enabling earlier detection of escalation signs.

Preventing abuse of the safeguarding process

It is important that the safeguarding process cannot be weaponized by abusive individuals in order to make use of the legal system as a further vehicle for harassment.

6. Unilateral child seizure must not set the baseline.

Where one parent has removed children from a shared arrangement without prior court sanction or professional advice, the court must not treat the resulting living situation as the status quo for interim orders. The pre-removal arrangement is the reference point unless safety requires otherwise. Without this, the system predictably rewards the most aggressive first-mover: seize the children, make allegations, and the burden falls entirely on the other parent to dislodge a new "status quo" that was created unilaterally.

7. Conduct of the removing parent subject to equal scrutiny.

The initial safeguarding assessment must consider the conduct of the parent who removed the children and made allegations, including whether the removal was proportionate to any identified risk. At present, the system contains a perverse incentive: extreme unilateral action is read as evidence of the seriousness of the situation, while proportionate responses from the other parent are read as lack of credibility. A parent who removes children and cuts off contact is taking a significant action affecting the children's welfare, and that action requires the same scrutiny as any allegation.

Delivering for mainstream cases

1. Presumption of Parental Involvement replaced by Duty to Promote Safe and Substantial Co-Parenting.

Courts must actively promote substantial, regular, meaningful dual-parent involvement where safe, and give reasons for any departure. This provides greater clarity than the repealed Presumption.

2. Statutory guidance to indicate equal time-sharing as the suitable starting point in low-risk cases.

Where no risk of harm has been identified, guidance issued under the duty will indicate that arrangements approaching approximately equal time are generally likely to further the child's welfare. This is illustrative, not mandatory, preserving judicial discretion while sending a clear signal. International experience suggests that when parents understand separation will not automatically sideline one of them, contested proceedings fall.

3. Encourage private supervision to prevent alienation through delay, while Cafcass investigates allegations.

Courts are guided to order private ISW help or independent expert assessment early due to the Cafcass backlog which risks entrenching estrangement. Contact centres (expensive and often unavailable) should not be the default recommendation in cases where independent social workers are appropriate for supervised interim contact and assessment.

Note : How the Proposed Duty Shortens Processes and Reduces Tactical Prolongation

Private family law cases often take 36–47 weeks (MoJ Family Court Statistics, Q3 2025), extended by Cafcass backlogs, contested low-level allegations, and unclear outcome norms.

A system with a clear, evidence-based norm reduces that incentive and improves long-term co-parenting and child outcomes for the majority of families. By making substantial shared parenting the expected outcome in safe cases, the amendment shifts parents toward agreement rather than adversarial tactics. The current system, which offers no clear expectation of outcome, gives both parties reason to litigate. Accountability measures (symmetrical scrutiny of unilateral actions, recorded findings on unmeritorious allegations) raise the bar for weak claims, making tactical prolongation less viable and reducing repeated hearings.

These changes promote efficiency without presuming all allegations false: safety overrides given high-risk flags, but clearer norms discourage the playbook of low-evidence escalation.

An illustrative example of possible Amendment text follows.

ILLUSTRATIVE CLAUSE TEXT

Duty to Promote Safe and Substantial Co-Parenting

For discussion — not final parliamentary drafting

> **Note:** This text sets out the principles and structure of the proposed amendment in illustrative clause form, intended for discussion with MPs, advisors, and legal professionals. It would require adaptation into proper parliamentary counsel style before formal tabling. It is designed to be inserted into section 1 of the Children Act 1989 as a replacement for the repealed subsections (2A)–(2B), via amendment to the Courts and Tribunals Bill 2026.

Proposed new section 1(2A): Duty to promote safe and substantial co-parenting

After subsection (1) of section 1 of the Children Act 1989 (or in place of omitted subsections (2A)–(2B)), insert—

(2A) In proceedings in which the court is considering making, varying, or discharging a child arrangements order (within the meaning of section 8(1)), the court must, so far as is consistent with the child's welfare as the paramount consideration under subsection (1), promote the safe and substantial involvement of both parents in the child's life.

(2B) For the purposes of subsection (2A)—

(a) "safe" means involvement that does not expose the child to a risk of harm;

(b) "substantial" means regular, direct, and meaningful involvement, which—where suitable and in the child's best interests—should ordinarily include a significant and ongoing share of the child's time with each parent.

(2C) In applying the duty under subsection (2A), the court must have regard to statutory guidance issued under subsection (2H), which may indicate that, in cases with no identified risk of harm, arrangements approaching approximately equal time-sharing are generally likely to further the child's welfare, without creating any fixed presumption or rule.

(2D) Where the court identifies, from evidence, a C1A form, safeguarding enquiries, professional observations, or otherwise, any credible allegation or indication of risk of harm, the court must—

(a) as a priority and without undue delay, direct an independent risk assessment (which may be expedited or privately funded where appropriate to minimise delay);

(b) not make or continue any interim child arrangements order providing for unsupervised contact with the alleged risk parent unless satisfied, on the basis of initial enquiries, that there is no material risk to the child.

(2E) Where any professional involved in proceedings (including a Cafcass officer, children's guardian, independent social worker, or court-appointed expert) is subject to behaviour by a party that causes the professional reasonable concern for their physical safety, that professional must report the behaviour as a safeguarding concern, and the officer of the service or Welsh family proceedings officer must make a recommendation to the court for immediate protective measures in respect of the child. Such a recommendation has interim effect from the point it is made until the court reviews the matter.

(2F) In determining interim arrangements—

(a) where one parent has removed a child from a shared living arrangement without prior court sanction or professional advice, the court must not treat the resulting living situation as the established status quo for the purposes of interim orders; the arrangement that existed prior to the removal is the reference point unless safety requires otherwise;

(b) the initial safeguarding assessment must consider the conduct and proportionality of any unilateral removal alongside the allegations made, including whether the removal was proportionate to any risk identified.

(2G) Where allegations are found to be substantially without merit following fact-finding or assessment, that finding must be recorded by the court and given weight in any subsequent application by the same party relating to the same child or children.

(2H) The Secretary of State must issue, and may from time to time revise, statutory guidance on the application of this section, including—

(a) procedures for expedited and independent risk assessments;

(b) illustrative starting points for time-sharing in low-risk cases;

(c) factors relevant to assessing risk and determining the scope of involvement;

(d) alternatives to contact centre supervision, including family-supervised and independently assessed arrangements.

(2I) Nothing in this section affects the welfare checklist in subsection (3) of this section, or Practice Direction 12J, or requires the court to make an order where no order (or a different order) better serves the child's welfare."

Explanatory notes

Subsection (2A) creates an affirmative duty, stronger than the repealed presumption, requiring courts to actively promote safe and substantial dual-parent involvement and justify departures. The word "safe" appears first, signalling that safety is the precondition for involvement.

Subsection (2B) defines "safe" and "substantial." The definition of harm is deliberately left unanchored to the section 31(9) significant harm threshold used in care proceedings, so that the broader understanding of domestic abuse under Practice Direction 12J can also trigger safeguards. "Substantial" requires regular, direct, meaningful time—not token contact.

Subsection (2C) keeps the equal time-sharing illustration in statutory guidance rather than in the Act itself, making it evidence-based, adjustable, and harder to attack as a rigid mandate. It draws on international experience, notably Kentucky's rebuttable shared-time expectation, which was associated with a significant reduction in contested proceedings.

Subsection (2D) provides mandatory safeguards in high-risk cases: expedited independent assessment and no unsupervised interim contact unless initial clearance. The logic is straightforward: if a risk indicator is serious enough to warrant assessment, it is serious enough to warrant interim protection pending that assessment. The current system routinely allows unsupervised contact to continue during incomplete assessments, creating an avoidable window of risk.

Subsection (2E) addresses a specific and obvious mechanical gap. Under the current system, a professional who feels physically threatened by a party may note the incident internally, but no protocol requires that this triggers any change to contact arrangements. A person who is a physical threat to an adult in a controlled setting cannot be assumed safe with children. This provision mandates the response that common sense requires, and gives Cafcass recommendations binding interim effect—formalising what is already practical reality, since magistrates defer to Cafcass on safeguarding. The interim effect lasts until the court reviews, avoiding an artificial fixed time limit that courts cannot realistically meet.

Subsection (2F) addresses a perverse incentive in the current system. Where one parent unilaterally removes children and makes allegations, the system tends to treat the resulting arrangement as the baseline and require the other parent to dislodge it. This predictably rewards the most aggressive first-mover. Worse, the system reads extreme unilateral action as evidence of the seriousness of the situation, while proportionate responses from the other parent are read as lack of credibility—creating an incentive to escalate rather than cooperate. This provision requires that the pre-removal arrangement is the reference point, and that the removing parent's conduct receives the same scrutiny as any allegation.

Subsection (2G) creates accountability for unmeritorious allegations by requiring findings to be recorded and weighted in future applications. A system where allegations are the primary mechanism for departing from shared involvement will inevitably generate more allegations. Recording outcomes discourages serial tactical claims more effectively than theoretical costs sanctions.

Subsection (2H) provides the statutory guidance power, including for alternatives to expensive, inaccessible contact centre supervision that can function as a de facto contact cutoff.

Subsection (2I) is a standard savings provision preserving the welfare checklist and Practice Direction 12J.

In conclusion

I believe that although the intention to reduce dangerous miscarriages of family law is obviously good, this is best served by reforms that have a predictable effect in bringing that reduction about. This can be done alongside delivering for the typical case, as well as reducing the total burden on the court system, which is already at a point where the level of delay is heavily impacting families. I believe MPs should support this approach over something that relies on the ephemeral miasma of ‘changing a culture’. Rather, we should put our trust in a rational focus on concrete practical steps to achieve better outcomes.

I hope that this submission proves to be of use to your Committee and I am quite happy to engage in any further correspondence or interview.

Yours faithfully

Warwick Dumas, Ph.D.