

Welcome to the fourth edition of Police Family, FamilyLaw4Police's quarterly newsletter providing police personnel with updates in the area of family law.

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## Do Family Courts really favour the mother?



Family solicitors often speak to fathers who believe that should they take any dispute regarding their children to the Court, they will have fewer rights than the mother. This is a common misconception which is not helped by the media who enjoy reporting fathers in superhero costumes scaling important buildings. Little is said however about the many cases where the children in fact have primary residence with the father or that shared residence orders are being made more frequently.

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## Mediation

**Mediation is now compulsory for people issuing proceedings, there are certain exemptions, but these are few and far between.**

A referral to mediation is generally a good thing in family cases as the entire process of family proceedings, be they contentious or otherwise, is geared around parties reaching an agreement either over how they divide their assets or how they sort out the living arrangements for their children.

If you are issuing an application within family proceedings you will have to attend at least one session of mediation, due to the fact that mediation is a voluntary process if you do not wish to mediate then you will not need to attend a second mediation session. However be aware that a Judge may query whether parties attended mediation and may be critical if mediation was not at least attempted.

### Confidential

As well as being a voluntary process, mediation is by and large confidential, this means that what is said in mediation does not go any further and cannot come back to bite you if your matter proceeds to court. Please be aware that there are certain exceptions to this

issue of confidentiality, for example financial disclosure and also child protection issues.

### Impartial

The mediator is impartial; they do not act as a Judge and cannot make any final binding agreements. In fact mediators are so careful to ensure that the parties do not mistakenly believe they have reached a final agreement by calling any final arrangement a "Memorandum of Understanding". Nor does a mediator try to help the parties get back together, that is something that a Marriage Guidance Counsellor is far better equipped to do. What a mediator will however do is help to facilitate an agreement between parties.

### Good for Children issues

Mediation is very good for children issues. The entire court process surrounding children proceedings is geared towards mediation. Indeed the First Directions Hearing is with a CAFCASS Officer to see whether or not an agreement can be reached. You may well find that if you attend Mediation and find it unsuccessful and subsequently issue Children Act Proceedings, that the Judge sends the matter back to mediation for you to give it a second try. You should therefore be aware that the Court will always encourage you to try and reach an agreement no matter what stage you are at.

### Keep your solicitor close

When dealing with the division of the marital finances, you would be well advised to keep your Solicitor at hand, albeit in the background. A good mediator will help facilitate a settlement suitable for a District Judge to approve and will always suggest that after the mediation session to discuss options for the division of the assets, that both parties refer to their Solicitors for advice before coming back to a final mediation session to reach an agreement. You should not just present your solicitor with a Memorandum of Understanding, which is a document you receive at the end of the Mediation sessions, because you will both feel that you have either settled or finalised the matter and the solicitor may have to unpick it. This is not an ideal outcome and can easily be avoided by consulting your solicitor prior to your final mediation session.

By and large the feedback on Mediation has been positive. Parties who are able to mediate a decision often find that it works better than one forced upon them by a Court and it enables them to keep control of their decisions relating to their own property, finances and children.

**You can refer yourself, or ask your solicitor to refer you. To speak to Sarah Thompson, solicitor and Russell Jones & Walker's family law mediator, telephone 0808 175 7710 or alternatively email Sarah at [S.A.Thompson@rjw.co.uk](mailto:S.A.Thompson@rjw.co.uk).**

# Kernott v Jones: The Cohabitation Debate

On 26th May 2010 the Court of Appeal handed down their judgement in the above cohabitation dispute.

The facts of the case are as follows:

- Parties cohabited from 1985 to 1993 and had 2 children together.
- In 1985 the parties purchased a property in joint names, for £30 000. The deposit of £6000 was paid solely by the woman J from the proceeds of sale of a caravan. The balance of the purchase price was raised by way of an endowment mortgage.
- In 1986 the man K took out a loan for £2000 for home improvements, which enhanced the value of the property.
- During the relationship the parties shared the running costs of the property, including the mortgage payments
- Upon separation in 1993 the parties agreed at that time that their interest in the property was equal.
- J remained in the property with the children and assumed full responsibility for all the running costs, with minimal financial support from K for the maintenance of the children.
- In 1996 K bought another property for £57 000. J agreed to him cashing in a jointly held endowment policy to fund the deposit. J received her half share of the policy proceeds at the same time.
- In May 2006, nearly 13 years after separation, K sought payment for his half share of the property. On 19th March 2008 he took steps to sever the joint tenancy of the property in equal shares.

Court proceedings were commenced by J on 26th October 2007, where she sought a declaration from the Court that she held the entire beneficial interest of the property. The view of the trial judge agreed with J, stating that J's investment towards the purchase of the property, particularly since separation, meant that she was entitled to more than a 50% share. The initial intention of the parties to provide a home for themselves as a couple and their children had altered since separation. K, until recently, had demonstrated that he had no intention of realising his beneficial interest, by ignoring it completely; failing to invest in it; failing to maintain or repair it and concentrating solely on his own property. Consequently, the judge awarded J a 90% share and K only 10%.

K appealed to the High Court, but his appeal was dismissed. The Judge concluded that although the intention of the parties cannot be inferred, the Court is free to impute a common intention, which here was to change their beneficial interests. The Judge could then go on to award what was fair and just.

K appealed again to the Court of Appeal who upheld his appeal and ruled that there was no evidence from which the Judge could properly infer a common intention to vary the equal beneficial interests held upon separation. The Judge's view was that the property had been conveyed into joint names, which created equal interests and the parties agreed these equal

interests upon separation. In order to displace these interests there has to be some form of conduct. The simple passage of time is not enough to displace them, even if in the meantime the party who has left the property has obtained alternative accommodation and the party remaining has paid all of the outgoings.

The Court went on to state that if the parties had intended an alteration to the beneficial interests post-separation, then they should have acted accordingly and formally altered their interests. Such an intention could not be spelled out of actions here.

J has now appealed to the Supreme Court and the hearing of the appeal began on 4th May 2011. As yet, the outcome of the appeal is awaited and could take up to 6 months to be handed down. In the meantime the unknown situation causes somewhat of a quandary for practitioners and it is unclear as to how the court will proceed.

Further, this case potentially poses a huge dilemma for the Supreme Court. One of the main problems with cases involving cohabitants is that successive governments have failed to properly legislate on this area and provide clear law and guidance on dealing with disputes. In view of much recent public outcry over the Courts becoming legislators in the arena of privacy laws, will the Court be brave enough here to take the step of resolving this area and all its uncertainties once and for all?

## Do Family Courts really favour the mother?

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When speaking to fathers experiencing matrimonial disputes we reassure them of their equal rights and encourage them to resolve matters if they are not happy with the existing contact and residence arrangements. This can be done through mediation, negotiation via solicitors or ultimately by issuing Court proceedings.

Whilst statistically, most children do primarily reside with their mothers, this is often done for certain reasons which can be counteracted and therefore we advise fathers upon separation of the following:-

**1.** At the risk of sounding stereotypical, a greater percentage of mothers with children of school age work part time in comparison to fathers. If fathers were to reduce their working hours or alternatively, adopt a flexi working pattern which ensured they were available to carry out the school runs then they may find they can prove to the Court they are equipped to meet their children's needs. With many police officers, at Russell Jones & Walker we obtain their shift pattern well in advance and can demonstrate to the Court that it is possible for the father to have contact with the children on rest days which can ultimately lead to a Residence or Joint Residence Order. We also advise they speak to the federation regarding the option of adopting a more flexible working pattern.

**2.** When a couple separate, the father is often the parent who decides to vacate the matrimonial home. They often feel they are in a better position to afford temporary accommodation as opposed to the mother. We advise fathers who come to see us to try as far as possible to remain in the matrimonial home as the Court usually looks to maintain the existing status quo. If the father leaves and makes a Court application a few months down the line, by the time a hearing takes place the children will already have adjusted to living with mum and the Court is going to be reluctant to disturb the existing arrangement if it is working well.

**3.** In situations where the father does decide to move out, matters are made more difficult if they do not live locally to the matrimonial home. They may live in another town which means weeknight contact is impossible or live in a one bedroom property which would prevent overnight contact. It is important that if fathers do decide to vacate the family home, they consider what practical impact this will have on the time they spend with their children before doing so.

**If you would like more information regarding children matters or any other family matter, please contact a member of our FamilyLaw4Police team.**