

- **Lord Justice Wall accepts that there is a “perfectly respectable argument” for a review of Payne v Payne**
- **Families Need Fathers believes that the systemic delays in the family courts will always prohibit child welfare being properly considered and protected in relocation cases**
- **Legislation is urgently required**

In December 2009 Sir Bob Geldof and The Custody Minefield released a report criticising the courts for their application of out-dated case law in “leave to remove” cases. 47 Members of Parliament are supporting a Parliamentary Early Day Motion (EDM373) calling for better protection for child welfare in relocation cases before the family courts. Families Need Fathers has supported this campaign from its inception.

On 10th February 2010, Lord Justice Wall pronounced judgment in the first permission to appeal hearing on a leave to remove matter since the Custody Minefield’s report was published and EDM373 was tabled in Parliament. Our Director of Communications was present at this and an earlier hearing where the father’s submission was heard. The father was accompanied by a member of our charity, who attended as his McKenzie Friend. In his judgment, Lord Justice Wall commented:

‘There has been considerable criticism of Payne v Payne in certain quarters, and there is a perfectly respectable argument for the proposition that it places too great an emphasis on the wishes and feelings of the relocating parent, and ignores or relegates the harm done of children by a permanent breach of the relationship which children have with the left behind parent.’

He went on to say:

‘This is a perfectly respectable argument, and would, I have no doubt, in the right case constitute a “compelling reason” for an appeal to be heard.’

In this case however, Lord Justice Wall goes on to refuse the father’s permission to appeal, his reasons being:

- a) that the trial judge found the mother’s reasons for her wanting to relocate were genuine; and
- b) if the Supreme Court were to find that the weighting of evidence was wrongly applied by the judiciary in this and other leave to remove cases, a retrial would be likely. Wall stated his belief that a further delay, which retrial would inevitably cause, would not be in this family’s interests.

Families Need Fathers wish to make the following comments on the judgment:

1] The central principle of family law set out within the Children Act 1989 states that child welfare must be the court’s paramount consideration. It appears that once again, the mother’s reasons for the move are afforded great weight, whereas the impact on the children of relocation goes unconsidered. Such is the legacy of Payne v Payne on current judicial reasoning.

2] Wall’s second reason for dismissing the permission to appeal is that, were the appeal to be successful, a retrial would be inevitable and delay would not be in the family’s best interests. Why? Logic would dictate that ensuring that the impact on the children was properly considered as part of the judicial proc-

ess, and that the impact on the children was accorded proper weight to uphold the welfare principle, would be in the children's best interests.

3] FNF, being fully aware of the arguments for appeal, would comment that harm is not only caused to children from the extremes of a permanent breach to their relationship with the left behind parent, but by children not having both parents involved in their day-to-day care and schooling. This is what contemporary scientific research proves.

4] Wall himself follows Payne's reasoning when he states that the relocating parent made a strong case for her moving, but he makes no mention of the impact on the children of how relocation may affect their sociological, psychological, emotional and educational development.

5] In July 2009, Sir Mark Potter, President of the Family Division of the Courts, as reported in the press stated that the family courts face a crisis fuelled by increasing delays and a lack of funding. LJ Wall refuses permission to appeal due to his perception that the family would suffer harm caused by a further delay. Delay in family proceedings is inevitable given the current and ongoing crisis in the courts. Thus, LJ Wall's reasoning prohibits the proper development of law, and is likely to continue to do so until the unforeseeable day when the courts are not plagued by delay.

6] Wall said 'if I refuse the applicant's application in the present case, the domestic appeal process will come to an end', and so it did for the children in this case and will for all children caught up in relocation cases until such time as the existing legal precedent can be challenged in the Supreme Court or there is an improvement to existing legislation. Any prospect of child welfare and harm through relocation being properly considered has been put on hold. Under court rules and statute, a case cannot be heard by the Supreme Court when the Court of Appeal has denied permission.

7] Court secrecy rules prevent our discussing the merits of the father's own case, as presented in his submission, which were listened to at the earlier hearing. Under contempt rules, we cannot comment on the arguments that the father presented which were not addressed by Wall in his judgment.

For 39 years, the courts have allowed relocation and leave to remove without properly considering the impact on the children. Now that contemporary research confirms a risk of harm, it is entirely unacceptable that the courts continue to ignore such compelling evidence while upholding the legal niceties of process, procedure and precedent. The system is well served and protected, children are not.

A copy of the arguments contained within the 'Relocation: Children's Needs and Rights Campaign Report' can be downloaded at [www.relocationcampaign.co.uk](http://www.relocationcampaign.co.uk)