

# Private law children reform: A long and winding road

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# Private law children cases - ideologies

1. Children's welfare is best served by having ongoing, regular contact with both of their biological parents
2. Post-separation arrangements for children are best sorted out by parents themselves (rather than by a court)

The 'good' / 'responsible' post-separation family

- Process for making arrangements – private, cooperative
- Outcome of making arrangements – maintain parent-child relationships

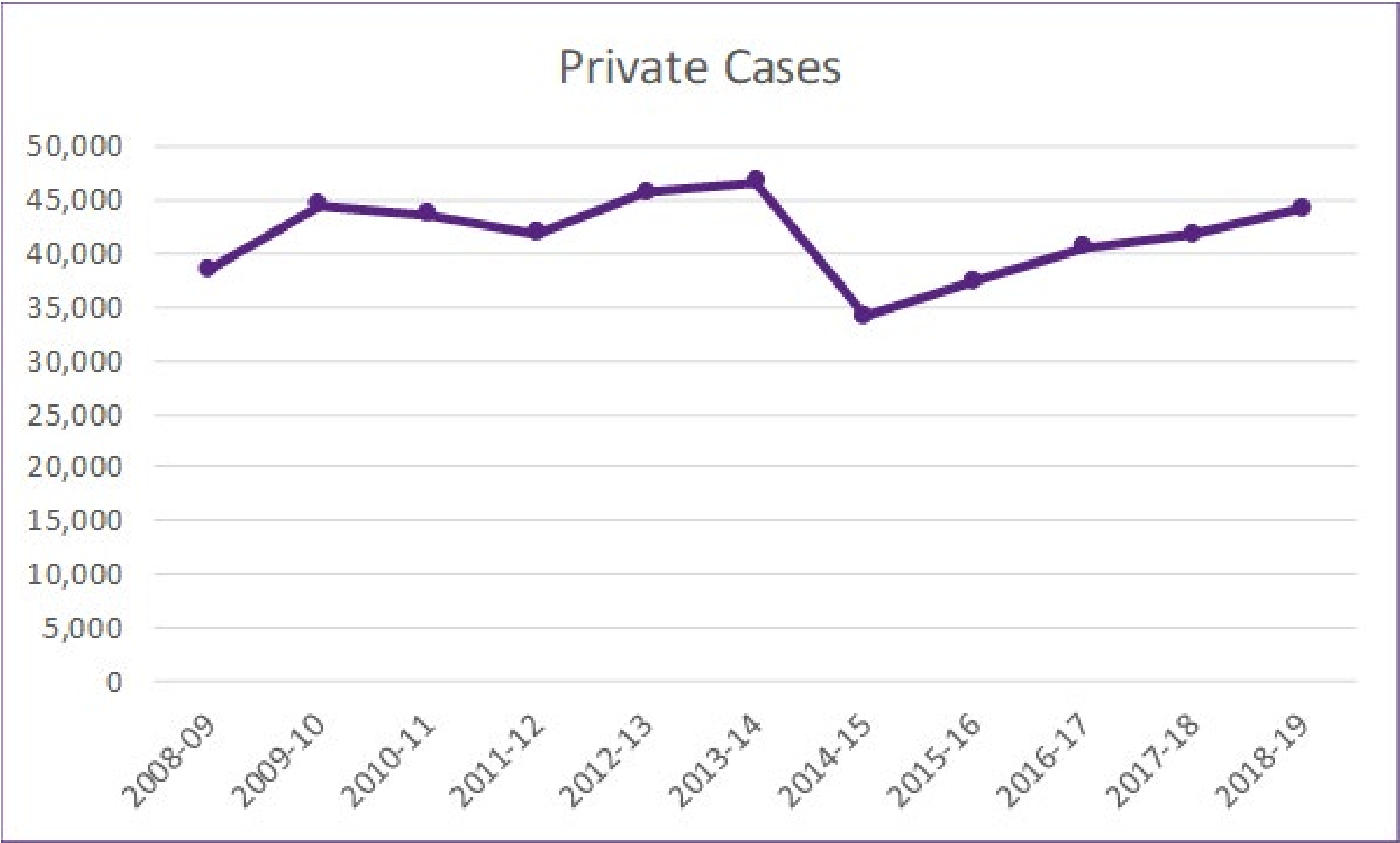
# The ideology of ongoing relationships

- The exception – public law
- The ‘norm’ – private law
- Family Justice Review (2011) – lobbying for extension to 50/50 shared care
- Children and Families Act 2014 – presumption of parental involvement
- *Re C (Direct Contact: Suspension)* [2011] EWCA Civ 521
- *Re L (A Child) (Contact: Domestic Violence)* [2000] EWCA Civ 194
- Practice Direction 12J (2008), revised 2009, 2014, 2017
- Domestic Abuse Bill 2018, Domestic Abuse Bill 2019...
- ‘Parental Alienation’; Cafcass Child Impact Assessment Framework

# The ideology of private ordering

- Pre-Application Protocol for Mediation Information and Assessment (2011)
- Family Justice Review (2011) – ‘making parental responsibility work’
- Children and Families Act 2014 – MIAM requirement
- Child Arrangements Programme (2014)
- Legal Aid, Sentencing and Punishment of Offenders Act 2012
- Mapping Paths to Family Justice (2017)
- 10% or 38% of separating couples with children going to court?
- Private Law Working Group (ongoing)

# Private Cases



# Conclusion

- Arguing against an ideology
  - exceptions
  - emphasise contradictions, reframe the issues
- Contradictions
  - public law vs private law
  - government strategy to end VAWG vs isolation of family court
- Reframing – what wider problems do private law children's cases respond to?
  - domestic abuse
  - child abuse and neglect
  - relationship breakdown – e.g. PLWG: Support for Separating Families Alliance