



FAMILIES NEED FATHERS – SCOTLAND
Both Parents Matter
Feumaidh na Teaghlaichean Athair Alba
Tha an Dà Phàrant Cudrom

PE1514/J

PUBLIC PETITION PE1513: Ron Park: Rights of Unmarried Fathers

Families Need Fathers Scotland [FNFS] is grateful for the opportunity to contribute to the Committee's consideration of Mr Park's petition.

Although the title of the petition refers to the rights of unmarried fathers Mr Parks makes it clear that he is approaching the issue from the standpoint of the interests and the rights of the children concerned.

We endorse that approach and regard Mr Park's initiative as a timely invitation to the Scottish Parliament to review and update the amendments made to the Children (Scotland) Act 1995 by s23 of the Family Law (Scotland) Act 2006. The 1995 Act has been overtaken both by social and economic changes within families in Scotland and by government policy which now recognises more clearly the obligations of both parents to promote the wellbeing of their children and also their children's right to family life. More than half of Scottish children are born to unmarried parents and the courts now recognise the rights of cohabitants on separation or death of their partner.

We note with regret the contents of the Minister's letter¹ to the Committee which appears reluctant to acknowledge that there are substantial policy inconsistencies between the hurdles the 2006 Act places in the way of unmarried fathers in particular (but also many non-resident fathers who do have Parental Right and Responsibilities) in securing meaningful involvement with their children and other areas of Scottish Government activity.

For example, the Scottish Government's National Parenting Strategy² highlights the importance of fathers playing an active role in their children's upbringing. It recognises that the positive involvement of fathers with their children is associated with better exam results, better school attendance and behaviour and better relationships in adult life. Recent results from Growing Up In Scotland show that children not in contact with their father were twice as likely to show high levels of behavioural and emotional difficulties³.

The Strategy also restates the United Nations Convention on the Rights of the Child (UNCRC) which repeatedly refers to the right of children to family life and identity.

The Children and Young People (Scotland) Act 2014, passed in the current session of the Scottish Parliament, was founded on a commitment to assimilate the spirit of the UNCRC into Scottish public life.

¹http://www.scottish.parliament.uk/S4_PublicPetitionsCommittee/General%20Documents/PE1513_F_Scottish_Government_19.06.14.pdf

²<http://www.scotland.gov.uk/Resource/0040/00403769.pdf> section 6, Additional Challenges

³<http://www.scotland.gov.uk/Resource/0045/00452548.pdf> figure 5.2 page 18

The Act's opening section on the duties of Scottish Ministers states they must:

(a) keep under consideration whether there are any steps which they could take which would or might secure better or further effect in Scotland of the UNCRC requirements, and

(b) if they consider it appropriate to do so, take any of the steps identified by that consideration.

The Scottish Parliament Equal Opportunities Committee recently published a report and recommendations aimed at challenging institutional and cultural barriers to the full involvement of fathers (including single dads, non-resident dads and dads in mainstream relationships) in parenting their children. They referred to the Justice Committee some additional matters raised in the FNFS submission⁴. We drew their attention, for example, to the unintended consequences on ordinary, reasonable fathers and non-resident parents of some of the premises underpinning legislation on child protection and domestic abuse.

The relevance of Mr Park's petition is in fact reinforced in Para 13 of the Minister's response in which she summarises some of the concerns that were raised in the consultations leading up to the 2006 Act and that led to imposition of limits on the new rights that were accorded to unmarried fathers. The new rights were unavoidable in terms of the European Convention of Human Rights but the Scottish Parliament appeared to choose the most restrictive option at the time. It is salutary but dispiriting to read the official record of the debates on the Act, much of it couched in negative and hostile language that would be out of place today.

In 13.1 the Minister refers to the fear of abuse and violence at the hands of former partners as a reason for not naming the father on the birth certificate but does not recognise that withdrawal or control of contact with the children of a relationship is itself a pernicious form of abuse of both fathers and children.

Lady Hale stated the position very clearly in the Supreme Court⁵: *“If decisions are then made on an inaccurate factual basis the child is doubly let down. Not only is the everyday course of her life altered but she may be led to believe bad things about an important person in her life. No child should be brought up to believe that she has been abused if in fact she has not, any more than any child should be persuaded by the adult world that she has not been abused when in fact she has.”*

In 13.2 the Minister unhelpfully joins together women who have been raped with those who have become pregnant through a brief relationship and suggests it is not “fair” that they should have to go to court to have PRR removed. In equalities terms it is difficult to see how it can be “fair” for a father to be denied involvement or even knowledge of his child even if it is the result of a brief relationship.

We would not expect women who have conceived after rape to be required to name the father.

However, we feel it is incumbent on the Minister to disaggregate the numbers from the general groups listed in 3.1 and 3.2 above to give a sense of how many of the 3,009 (5.2%) sole registered births in 2012 would be covered by each.

Most important of all is the assertion in 13.3 that “it was felt that some evidence of a commitment to joint parenting should be required.” That seems to us to be the heart of Mr Park's petition. It is the Catch 22 issue that arises very frequently in calls to the FNFS office and at monthly group meetings.

In child contact and residence cases sheriffs tend to look for “established family life”. How does a father establish family life when he has been excluded from his child from birth, not because of domestic abuse or other question mark against his suitability and commitment as a parent but because the mother does not want him to be involved?

⁴ http://www.scottish.parliament.uk/S4_EqualOpportunitiesCommittee/Families_Need_Fathers_Scotland.pdf

⁵ http://supremecourt.uk/decided-cases/docs/UKSC_2010_0128_Judgment.pdf para 44

This is not a rare and unusual situation in our experience.

The name on the birth certificate is effectively the gateway to demonstrating commitment. FNFS always advises people who get in touch with us to avoid going to court if at all possible. Negotiation or some form of out of court agreement are preferable. Whether in or out of court the toehold in law that the birth certificate offers gives the unmarried father the opportunity to explain his commitment. Without his name on the certificate it is too easy to stereotype him as an irritant or somehow suspect, rather than the parent he wishes to be.

Refusal to name the father on the birth certificate may sometimes be for one of the reasons cited by the Minister. However, it is often a deliberate act of exclusion. We are aware of situations where a mother has made the decision under pressure from her own family for racial, religious, class or other reasons. Exclusion in these cases is not attributable to the behaviour or character of the father and takes no apparent account of the rights of the child or the benefits that generally come from the involvement of the father - and, by extension, paternal grandparents, aunts and uncles.

We are aware of the Scottish Law Commission Report 1992⁶ and its observation at the time that the law discriminated against unmarried fathers by treating them less favourably than married fathers and unmarried mothers.

The 2006 Act addressed part of that discrimination even though it still leaves the status of most unmarried fathers contingent on the state of relationship with the mother at the time of registering the birth. It still excludes fathers in Mr Park's situation by treating them differently because the mother of their children refuse to put their name on the birth certificate.

The arbitrary selection of May 4th 2006 as the watershed date has created two sets of anomalies which arise regularly in calls to FNFS.

The first is that we have unmarried fathers who have Parental Rights and Responsibilities for a child born after May 4th 2006 but not for older brothers or sisters born before that date.

The second anomaly arises when children were born in England and Wales to unmarried parents after 1st December 2003, the relevant date south of the border for Parental Rights of unmarried fathers. When parents have separated and the mother has moved with the children to Scotland the father discovers that the rights he had and still has in England have somehow evaporated at the Tweed. Our experience is that the Scottish courts have not been energetically helpful in such cases⁷.

We believe the 2006 Act was not a precision tool but a blunt instrument and requires to be revisited. It contains too much that is arbitrary and has caused great damage in the lives of many children and their unmarried fathers. We believe it remains essentially discriminatory by accepting that the status of separated fathers is largely contingent on the state of the relationship as perceived by the mother, and may be open to challenge on ECHR grounds and/or under section 149 of the Equality Act.

We do not excuse or condone abusive behaviour on the part of separated fathers any more than we excuse or condone it on the part of separated mothers. We accept entirely that the welfare of the children is paramount and must remain so. The evidence is overwhelming that children prosper when both parents and their extended family are involved and co-operate with mutual respect. With respect to Mr Park's petition, in the context of our explanation above that it is time to bring family law in Scotland up to date with the overall benefits for children of support by both parents we believe a culture change is already under way that rejects the marginalisation of fathers.

⁶ <http://www.scotlawcom.gov.uk/publications/reports/1990-1999/#r135> paras 2.36 – 2.5

⁷ D v CHILDREN'S REPORTER 2009 Fam LR 88

Proposition 1: Requiring both parents to be named on the birth certificate.

We suggest that there should be a requirement for an explanation for 'sole registrations', perhaps by a tick box list of likely reasons that could be viewed by the father and is challengeable. We are aware that a mother determined to exclude the father is likely to tick the least challengeable box. This change would also be an opportunity to inform unmarried parents about the Parental Responsibilities and Parental Rights Agreement.

We do not understand why there is such urgency to register births in Scotland (21 days) when there are no obvious problems in England, Wales and Northern Ireland (42 days).

We believe that the registration of births should be accurate for public as well as private reasons. We do not understand a system that prefers to hold an original inaccurate birth certificate as sacrosanct and propose that the present obscure system of the Register of Corrections is insufficient to meet the requirements of family life for the children or parents.

Proposition 2: Award of full parental rights and responsibilities to both parents.

We find the Minister's reasoning for preserving the status quo insufficient. At UK and Scottish Government level fathers who do not support their children financially or emotionally are berated. It seems perverse that a system that excludes unmarried fathers who wish to be parents and do all the things that fathers are enjoined to do is justified by reference to those who do not.

While courts are not nurturing places for family relationships we believe that they are already well used to determining which parents are focused on the welfare and best interests of the children and which are not.

We support the proposition that both parents should be deemed to have Parental Rights and Responsibilities. Where, as now, there is dispute about the degree to which each parent should be able to exercise them, the courts can decide.

Proposition 3: Failure to supply a DNA sample.

In all of the above we are mindful that high conflict cases are rarely characterised by a focus on the best interests of the children. Parents need a route out of conflict so that, in the interests of the children, they will be able to co-operate with tolerance if not enthusiasm. Both mother and father have to be good parents long after the lawyers have gone home.

In this respect we tend to agree that the existing law in which "an inference can be drawn" from a refusal to supply a DNA sample is probably sufficiently flexible. In a recent interview Lady Elizabeth Butler-Sloss, former president of the family law division in England and Wales, commented about contempt actions: "To send her to prison is counter productive, because the child will not want to know the man who sent his mother to prison, particularly when she comes back and tells him about it."

In a case in which the mother was married and it was alleged that another man was the father of her child, a Scottish court decided against making a declarator of paternity based on the mother's refusal of DNA testing. A subsequent rapprochement between the parties led to a DNA test revealing that the child was in fact the child of the pursuer⁸. It is clearly in the interests of children in such cases to know who is their biological father, and this aspect of the law should be clarified in order to offer such children the certainty of DNA testing.

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⁸ <http://www.journalonline.co.uk/Magazine/53-11/1005883.aspx>