

PE1513/Q

Petitioner Letter of 20 September 2014 (revised 11 November 2014)

To The Committee,

I write in response to the submission made by Roseanna Cunningham on behalf of the Scottish Government.

Refer the question of whether all fathers should automatically have PRRs to the Scottish Law Commission

I would firstly like to address what I believe PRR's should mean, to make my position clear. Rights and Responsibilities are two entirely separate things. Rights refer to your rights as a parent to enjoy being a part of your children's lives, again this is my interpretation. But those rights have to be earned by accepting and upholding your responsibilities. Your responsibilities to your children are to ensure to the best of your ability to protect their health, their education, their happiness and their own rights as children. Only then can you be worthy of your rights as a parent to be a part of your child's life. With reference to a parent's responsibilities, I'd like to quote Gingerbread 2011 input to Westminster in relation to recent family law change. "We strongly believe that even though parents may live apart, their shared responsibilities toward their children continue". This makes no reference to the status of the parents relationship pre or post having children and as such imposes limitations to the reach of the responsibilities that any parents have to their children, be they married, living together, divorced, separated or never having been married to begin with. Responsibilities towards your children are the first thing any parent should accept, or if need be forced to accept. In the latter case that parent has done nothing to earn any rights to their child. Grouping them together as we do now does not necessarily create the best scenario to achieve the best possible outcome for children because where a parent is refused rights they are also refused responsibilities. This does nothing but take away the need for that parent to care for the welfare of their child. By all means if a parent does nothing to earn their rights they should be taken away, but removing responsibilities only harms the child.

Article 10 of Ms Cunningham's response shows clearly that there was a recommendation for both parents having PRRs but is countered by Article 11 with a very flimsy argument. Simply because the Government of the time chose not to follow on with the recommendations made to it when deciding which should be law and which not is no reason why it should not be recommended to reconsider. Social and legal viewpoints can and do change a lot in 8 years, in particular the social view that fathers are always the parent who do not take responsibility for their children. In a modern Scotland it has become, sadly, the norm for a father to be frozen out.

My point is that simply because it may have been considered not in the best interests of the law for the Children Act 2006 does not mean that it will not be in the best interests of the law in 2014. Since 2006 we have had various reports published which clearly indicate that having both parents in the child's life is drastically more beneficial to the child:

(Peters, M., Seeds, K., Goldstein, A. and Coleman, N. (2008) Parental Involvement in Children's Education 2007; Harris, A. and Goodall, J (2007). Engaging Parents in Raising Achievement – Do Parents Know they Matter? DCSF Research Report. RW 004: A Literature Review; Gutman, L.M. and Akerman, R. (2008). Determinants of Aspirations. Centre for Research on the Wider Benefits of Learning Research Report 27; Sammons (2007) EPPE 3-11 Influences on children's development and progress in Key Stage 2: Social/behavioural outcomes in Year 5. Research Report RR007; et. al.).

Allowing both parents PRRs then allows both parents to make decisions and have equal input in their child's life and wellbeing. Determining that any parent is unworthy of this input because of their sex or Marital/Civil Partnership Status (or Disability, Age, Gender Reassignment, Race, Religion/Belief or Sexual Orientation) displays gross inequality and in many other areas of our society today would be considered highly illegal under The Equalities Act 2010. It is my opinion that the studies published since 2006 must be taken into consideration and that legislation must be re-evaluated in line with this new and very compelling evidence.

Mothers giving a reason when registering a birth without providing the father's name

It is clear from the wording used by Ms Cunningham that the point of view taken is that this petition is solely aimed to force women to allow men into their child's lives. This is simply not the case. While it will prove true in the majority of cases, it is also true that proposed changes that have been suggested will hold absentee fathers to account for their children. In any case it stands to reason that this is not about parents, rather it is to ensure every child has the right to be in contact with both parents where it is deemed safe.

In refusing to proceed with the suggestion made by Families Need Fathers Scotland, giving reason for sole births, Ms Cunningham cites Dr Mackay's previous submission for reasons as follows:

- The child is a product of rape.
- The child is a product of incest.
- The child was conceived by a mother before her 16th birthday and is therefore the result of unlawful sexual activity
- The father of the child is a married man but the mother of the child is not his wife.
- The mother is a sex worker and does not know who the father of her child is.

- The mother was affected by substances - whether self-administered or administered by another person - and may not recall who the father of her child is.
- The father of the child did not wish the mother to proceed with the pregnancy and may have pressurised her to have an abortion. She may even have told him that she did have an abortion.
- The father of the child is or has been violent towards the mother (possibly during her pregnancy - when domestic abuse is known to increase) and the mother fears for the safety of herself and infant. She may also be fearful that the father will found on any known connection with the child as a means of continuing to exert dominance and control over the life of the mother.

In all but reasons 1, 2 & 8 there appears to be the notion that parents can refuse to accept the responsibility they undertake when they engage in sex which results in a child. Every parent has a duty to their children to support them and care for them and to uphold their children's best interests. This includes allowing a child access to both parents and to know where they come from in line with "The Rights of the Child". As parents it is our responsibility to ensure these things to our children to the very best of our ability.

In respect to reason 3, if a man chooses to have sex, knowingly or not, with a minor then he must still be forced to accept responsibility for his child (as well as the accompanying criminal charges brought for sex with a minor), whether he wanted the child's mother to abort or not - which speaks also to reason 7. Reason 4 should also have no bearing in that if a man chooses to commit adultery he must still be forced to face his responsibility to any children which are the result of his actions.

Obviously if a woman is a sex worker this will complicate the issue somewhat and this may be covered under any caveats included, however, in my opinion, this does not detract from the fact she still has a responsibility to her child to do her utmost in allowing her child contact with his/her father. I accept that in this case a mother may be unable to name the father but this does not mean every effort should not be made in order to identify the father and in turn bestow his responsibilities unto him - again whether he would like them or not these responsibilities should be enforceable. The very same principle applies to mothers who were under the influence, this does not relieve them of the responsibility they have to their children.

It is completely acceptable to suggest a mother may be fearful of a violent ex-partner, but again there remains a perfectly reasonable measure in simply being asked the question in a safe environment and being able to vocalise that the child's father was or has threatened violence, after which these claims can be properly investigated if need be. I in no way condone the involvement of violent men (or women) in their children's lives, child safety must remain paramount to the law but I also believe there are very reasonable methods that can and should be used to navigate the myriad of reasons given and accepted as to why implementing joint registration or re-registration of births could not be possible.

While I do understand Dr Mackay's concerns and her submission, I firmly believe that every one of the reasons given can be provided for, whether it be complete exclusion via PVG testing (or similar) for violent ex-partners or if it is simply forcing an unwilling father who, for any reason from breaking the law in engaging in under age sex or if he simply doesn't want to be involved, does not wish to be part of his child's life. We cannot exclude every unmarried & separated parent simply to protect some. Blanket laws like this force many parents, who have done nothing wrong, and many children who would be best served with both parents in their lives, to live apart.

Giving courts the power and discretion to order DNA tests when seeking to determine paternity

I'd first like to address point 5. If a child who is old enough to make his/her own decisions and understand the consequences of them chooses not to consent to a DNA test, then as is the current legal standpoint the child's wishes should be taken into account. It would follow that the current method of deciding if a child is old enough to make and understand his/her decisions should also remain as is. Given that it is already the case that a court will determine if a child is old enough to make these sort of decisions and if so will take into account the child's wishes, it is clearly *Reductio ad Absurdum* (extending my argument to ridiculous proportions) to question whether the child should be held in contempt if they choose not to consent to a DNA test.

With reference to Families Need Fathers response "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.", I completely agree that criminal sanctions should be out of the question. In suggesting the court hold unco-operative parents in contempt, in no way did I intend to suggest criminal sanctions should be placed upon that parent, whether they have full custody or not. Contempt in cases such as this should result in sanctions on a parent's rights (not to be confused with responsibilities toward the child) with regards the child. Perhaps a time limited sanction on decision making regarding the child's future or wellbeing would be more suited. This seems to me a rational sanction as if the parent is so engulfed in his/her own ill feeling toward the other parent that they choose to exclude them, or to obstruct any attempt to be included in their child's lives, then surely it must be assumed that the obstructing parent does not have the child's best interests at heart? At the heart of the entire issue is the welfare of the child after all.

I fully understand that there are steps and procedures that can be followed to surmise from a refusal to co-operate, but these are not legal guarantees and very much rely on a number of different variables, so much so that a decision made by one magistrate on one day in one court could be entirely the opposite of another made a different day in a different court in any theoretic

case. This variation of interpretation of the law can, and should, be addressed by allowing a magistrate the power to demand a DNA test where it is deemed necessary by the court. A position shared by The Scottish Law Society, something which should be considered prominently in any decision made by The Committee. In allowing a court this power, or making it a legal requirement for cases which require legal involvement, we create equality. Requiring everyone to be tested at their own expense (something for which I'm sure I speak on behalf all unmarried parents striving to see their children when I say would be no issue at all) would give everyone a solid legal foothold on which to fall back if it were necessary.

In reference to article 7, "the use of reasonable force to obtain a sample would be unjustifiable and possibly impracticable.", I respectfully disagree. Given that DNA testing can be done with a simple cheek swab, there can be absolutely no question of the procedure being invasive, or for that matter, impractical. With this method there is absolutely no harm to the child and it can be done at a location within reasonable proximity to the child's permanent address under the correct supervision. That DNA testing can be done in such a manner, and given that it would provide an almost 100% definitive answer in cases where the court is informed of a paternity dispute, it would seem practical to introduce powers to allow a court to enforce such a test.

Addendum dated 11/11/2014

It has been brought to my attention that punishments involved with non-payment of Child Maintenance now include measures to affect the offending parents credit rating (the term used was father who refuses to pay, but I maintain equality should be at the fore). This is precisely the level of punishment I had intended in my suggestion previously, as opposed to what was summarised by various responders, and I firmly believe that this example can, and should, be followed by taking this method of punishment (and perhaps similar) from simply offences of non-payment of Child Maintenance and apply it also to parents who refuse to abide by legal judgements & court requests et al.

Ron Park