



PUBLIC PETITION NO.

PE01635

Name of petitioner

Emma McDonald

Petition title

Review of section 11 of the Children (Scotland) Act 1995

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to review the current system and operation of child contact centres and the procedure under section 11 of the Children (Scotland) Act 1995 so that the rights, safety and welfare of children are paramount in relation to child contact arrangements where domestic abuse is an issue, and to ensure that section 11 of the Act is consistently implemented across Scotland.

Action taken to resolve issues of concern before submitting the petition

I have raised the issues within the petition with MSPs past and present.

I have attended a multi-agency meeting at the Scottish Parliament, facilitated by Neil Findlay MSP, with representatives from a range of women and children's charities and other interested parties.

Petition background information

Issues concerning contact with children by non-resident parents are normally settled between parents. In situations where this is not possible such issues may be settled through the civil court processes. These cases are heard and relevant information submitted during proof hearings.

When a contact order is made, it is legally binding until the court decides otherwise. The court can require contact to be supervised in certain situations, where the children have not seen a parent for a period of time or where the parent seeking contact has addiction issues, a history of violence or where there is a risk of harm to the child. Such contact may be ordered to take place within a Child Contact centre. Research highlights that domestic abuse may not end at the point of separation and the presence of children has been found to be a risk factor for continued abuse. Court-ordered contact with abusive persons facilitates the continuation of abuse and negates the protective consequence of leaving an abuser.

After separation, for the child, contact with the abusive parent maintains the negative effect of living with domestic abuse, sometimes from witnessing the abuse of the non-abusive parent, normally the mother, at handover, simply being aware of the mother's fear and anxiety about contact, or sometimes directly from father to child. Research has estimated that 90-95% of all young people under eighteen have been exposed to

estimated that 29.5% of all young people under eighteen have been exposed to domestic abuse, and approximately 5.7% in one year (Radford, Corral, Bradley & Fisher, 2013). There is a strong association between domestic abuse and fatal child abuse in 'family wipe-outs'. These are incidents where men kill not only their partner/ex-partner, but also their children (and often themselves).

A core message of recent research by Emma Katz is that the children of adult victims are not just being exposed to the physical violence (E Katz, 'Beyond the Physical Incident Model: How Children Living with Domestic Violence are Harmed by and Resist Regimes of Coercive Control'). They, as much as the adult victims, are experiencing coercive control – being manipulated, confused and harmed by it. They develop coping strategies which involve policing their own speech, activities and movements. Like their mother, their radar is always on alert, trying to predict the unpredictable. Abusive partners who are also fathers (or in parental roles) frequently undermine mother-child relationships as part of their strategy to gain domination in the household.

This is the context in which the action called for in this petition is sought. A further 4 points require consideration in relation to the action called for.

1. Ensuring there is no routine presumption that contact with a non-resident parent is always in the best interests of children, particularly where domestic abuse is an issue.

As stated above research estimates that 29.5% of all young people under eighteen have been exposed to domestic abuse. Children suffer far-reaching negative impacts on their behaviour and emotional wellbeing, on their cognitive abilities and attitudes, and their neurological development due to domestic abuse.

This however is not the worst case scenario. In the House of Commons on 15th September Angela Smith raised a debate on Domestic Abuse in Family Law Courts. Where she asked the house to note the Women's Aid report entitled Nineteen Child Homicides, published in January 2016; and calls on the Government to review the treatment and experiences of victims of domestic abuse in family law courts.

She said "The debate today is not really about courts, laws and statutory agencies; it is about children—or, rather, it is about children whose mothers have been subject to domestic abuse and who themselves have become victims of violent and coercive fathers. This debate, in particular, is about the 19 children who have died at the hands of their fathers over the past 10 years, all of whom had access to their children through formal or informal child contact arrangements".

This debate heard from MPs across the House, all of whom recounted concerning and distressing issues raised by their constituents in relation to child contact and domestic abuse.

Dr Fiona Morrison conducted a qualitative study with 18 children aged eight to fourteen years, and 16 mothers who had experienced domestic abuse in Scotland. The research found evidence of the continued abuse of women and children following parental separation that was linked to contact arrangements. Children reported that this had negative impacts on their relationships and sense of safety. It is of vital importance to take account of the impact of the ongoing consequences of coercive and controlling domestic abuse when considering children's contact arrangements.

During the passage of the Family Law (Scotland) Bill in 2006 the Scottish Executive stated that "family situations where domestic abuse has been an issue present unique circumstances in which the court is considering not only the welfare of the child but also the risk of continued harm to an adult and that specific mention on the face of legislation would be beneficial to all concerned". The Parliament agreed to amendments brought forward to section 11(7) of the Children (Scotland) Act 1995 which put in place provisions in relation to contact and residence where domestic abuse has been an issue. However, despite this, domestic abuse is not routinely taken into account and abusive men are granted contact with their children.

Notwithstanding these legal obligations, the default position adopted by legal practitioners and courts in cases of child contact and residence where domestic abuse is an issue, seems to be that (regardless of the potential risk to children's safety, and the detrimental impact on their wellbeing) contact with a non-resident abusive parent is

the detrimental impact on their wellbeing) contact with a non-resident, abusive parent is always considered to be in the best interests of children. This belief persists, even in the face of children's legally sanctioned and expressed view that they want no contact.

There is ample evidence that abusive men's parenting capacity is often overestimated, leading to high levels of neglectful care during contact, continued opportunities to exercise coercive control, and making it difficult for women and children to establish safe and independent lives. The fact that domestic abuse is a parenting choice actively exercised by perpetrators is ignored.

2. There needs to be a comprehensive and independent review of the role and practice of Child Contact Centres in relation to domestic abuse, including coercive control.

Courts routinely regard supervised contact as an appropriate response to dealing with the risk of further abuse, and such contact is facilitated through Child Contact Centres, whose response to domestic abuse is likewise unsafe and uninformed, thus compounding the problem.

Child Contact Centres (CCCs) have no legal definition in Scottish Law and their development has been on an ad hoc basis. Such centres have no independent system of regulation, inspection or avenue of complaint. There are no formal qualifications necessary for staff to oversee supervision. Centre locations and lack of security raises questions over the extent to which the safety and the rights and welfare of vulnerable children is considered by the court system and indeed by the Scottish Government which partially funds centres.

Women are urged to leave violent partners in order to safeguard their children, but then the judicial system contradicts this position by routinely ignoring the stated wishes of children and requires women to facilitate contact, despite their justifiable concerns about the safety and wellbeing of their children. If such concerns are raised, they risk being seen as hostile and malicious by centre staff. This can lead to women being found in contempt of Court and in extreme cases imprisoned, further compounding the distress to children and women. In summary, until the duty under section 11(7A) is consistently and regularly undertaken, inappropriate and unsafe contact orders will continue to be made and abused women will continue to be fearful of undertaking court-ordered contact obligations, due to risks posed to both their children's safety and long-term welfare and their own protection. It is vitally important to secure realistic and adequate safe contact arrangements.

3. There needs to be a comprehensive and independent review of the regulation, quality control, standards, policies and procedures which govern the staffing and running of Child Contact Centres in Scotland.

Currently there is no system of regulation or inspection of child contact centres. They are considerably underfunded by the Scottish Government. The system that is being funded is woefully inadequate, potentially dangerous, is not impartial and in the worst case scenarios can allow coercive control and further abuse. The locations, staffing and security of such centres all raise significant questions regarding children's safety and rights. There is a categorical need for a comprehensive and independent review of the role and practice of CCCs in Scotland, in relation to domestic abuse, including the regulation, quality control, standards, policies and procedures which govern the staffing and running of CCCs.

4. Children's views are unfailingly, routinely and effectively taken into account in relation to court and other proceedings concerning contact where domestic abuse is an issue, by appropriately trained and qualified staff who are fully aware of the dynamics and impact of domestic abuse on children and the non-abusing parent, including coercive control.

This inequitable position is exacerbated by the fact that children are routinely denied their legal right to express a view on their future contact with a non-resident parent, and thus, a view on their future safety and wellbeing. The process of taking views is not consistent, adequate or participatory. It often fails to reflect the child's views, and those tasked with this responsibility are often neither appropriately trained or qualified staff, nor fully aware of the dynamics of domestic abuse, including coercive control. At

present very few if any areas other than West Lothian employ a children's rights officer who is able to fulfil this role.

This petition has been raised as a direct result of my own and my children's experience in the court system which I now understand is not by any means unusual. Our experience revealed a system that was prejudiced and adversarial in nature where the rights and welfare of the child seemed the last consideration in the process.

Unique web address

<http://www.parliament.scot/GettingInvolved/Petitions/PE01635>

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