

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

ANONYMOUS SUBMISSION 2

1. Voice of the child

I agree that it is important to be able to take on-board the views of children while also protecting them from as much of the stress involved in the court process as possible. They should be protected from feeling like they need to choose sides (ie one parent over another) as this will result in conflicting emotions and affect their mental health. I also think it is important that the views of children are taken in an objective neutral environment wherever possible. Views should be taken in context - the parent with the majority of time with children / resident parent is in a position to alienate children from the parent with less time / non-resident parent. At present, organisations such as Women's Aid will also provide therapy for children based on allegations from mothers against fathers without evidence or investigation via police / social services / court involvement, which also promotes parental alienation. If this continues to happen, then this should be recognised by courts when considering the views of children, and perhaps psychologists should be appointed by the court as standard.

2. Children's best interests

At present the Bill is missing an historic opportunity to make a huge difference to children where one parent is attempting to end or restrict contact with the other. Many European countries and US states take 50/50 shared care as the automatic starting point for contact with children - this is known as shared parenting or shared care. Shared care (50/50) has been shown by a large body of international research to be in the best interests of children, even in high conflict separations. Shared care has been shown to benefit children's mental health, ability to form adult relationships, academic performance, and economic performance. Courts in Scotland do not currently recognise shared care as an option, saying that it requires good communication. Sheriffs will also cite outdated notions such as 'it is important that a child has one home when at school' or 'young children are confused by having two different homes' or 'it is normal for a father to see his children every other weekend when they are at school.' This demeans the value of the non-resident parent (often the father - and indeed the language used is often gendered). It also means that the starting point in most child contact cases is one parent having to fight for a small amount of contact from the other. The parent with the majority of contact time can block communication and refuse to attend mediation, which is then taken by the court as a reason not to allow more contact with the other parent (due to poor communication). Furthermore, the court process takes the starting position as the status quo, and the longer this lasts the less likely it is that a sheriff will change it - however, the court process is incredibly slow, often taking a year or more to come to a decision, which perpetuates the status quo. This approach is not in the best interests of children, and is not in line with current research. Unfortunately the Bill, as it stands, will allow this outdated approach to continue, and children will continue to suffer.

Parental alienation is increasingly recognised as an important issue, and is considered child abuse. Parental alienation is enabled when one parent has more time with children than the other. Parental alienation is almost impossible when parents have equal care. Therefore a shared care approach as standard would reduce the risk of children suffering from this form of child abuse.

I think it is important that the Children (Scotland) Bill puts shared parenting / shared care (50/50 care) at the forefront, bringing Scotland in line with other progressive countries, benefiting children.

3. Child welfare reporters and curators ad litem

At present child welfare reporters vary wildly in their approach. I think it is important that they require a set level of training, and must adhere to the same standards. It is also important that they have a Continued Professional Development (CPD) requirement to be completed each year, which should be structured to ensure they remain up to date with current research.

I also think the Bill should set requirements for solicitors representing parties in family law. At the moment solicitors may voluntarily choose to join the Family Law Association which requires them to adhere to a code of conduct which places the best interests of the children as the top priority. Solicitors who are not members of the Family Law Association are not bound by such a code of conduct, and so are able to place the interests / instructions of their client as the top priority. I am surprised that something as important as family law does not require solicitors to adhere to a specific professional code of conduct, and strongly believe the best interests of the children should always be the top priority.

4. Factors to be considered by the court when making contact and residence orders

As stated in my comments to point 2, I believe the Bill is currently missing an opportunity to promote 50/50 shared care as standard, which research has shown to be in the best interests of children. This also allows both parents, and their wider families, to be equally involved in children's upbringing, rather than prioritising the contribution of one parent and their family. For example, at present, sheriffs will say 'it is unthinkable that a child would not wake up in their own home, and with their mother, on Christmas Day' - this means it is completely thinkable that a child would wake up without their father on Christmas Day, and also implies the father's home is not the child's home. The Bill does nothing to change this approach favouring the contributions of one parent over another, which is often gendered. Research shows that 50/50 shared care is in the best interests of children even in high conflict situations (see comments to point 2), and also shows that it is in the best interests of children's mental health for both parents to be present at milestone events such as Christmas, birthdays, school events, etc. I believe it is important that the Bill reflects this, and brings Scotland in line with other progressive countries, for the benefit of children.

As mentioned in my comments to point 2, courts will at present award the majority of contact to one parent if communication is poor. The court gives no consideration to which parent is interfering with communication, and so a strategy used by the parent with the majority of contact is to prevent communication themselves by refusing

communication by any method and refusing to attend mediation. If a parent behaves this way, questions should be raised as to whether they are considering the best interests of their children, and I believe a court should give consideration to such behaviour - it could be viewed that courts reward the bad behaviour of parents in these cases, to the detriment of children who are deprived of time with a good, safe, loving parent as a result. The Bill as it stands does nothing to change this approach.

I agree that it is important to take allegations of abuse against children or a parent seriously. This should be true whether the allegations are made by the mother, father, or children. At present allegations that mothers abuse fathers do not tend to be taken seriously, while allegations that fathers abuse mothers tends to be taken at face value. I do not believe it should be possible for someone to be treated as guilty of abuse based solely on the allegations of one person - allegations should be investigated by police and/or social services if they are to be acted upon in a family law court. The Bill as it stands leaves open a situation whereby one parent could interfere with contact with the other by making false allegations which may never be investigated.

At present organisations such as Women's Aid will take claims of abuse at face value from mothers, without evidence or the involvement of police or social services. Courts take involvement by Women's Aid very seriously, and NHS Health Visitors and GPs also take this seriously. This can result in a situation where a mother claims she is abused, Women's Aid support this claim, and NHS professionals support these claims because Women's Aid are a trusted organisation. This can mean Women's Aid and NHS professionals will corroborate the mother's claims of abuse, in the absence of any evidence, investigation, or police and social services involvement. Women's Aid and the NHS professionals may never have even spoken with the father. This can ultimately mean a court takes an allegation of abuse against a father as truthful, in the absence of any evidence or investigation, based solely on the claims of the mother. I do not believe this should be possible - people should not be treated as guilty without the opportunity to be investigated and demonstrate innocence.

At present the Bill reinforces / gives legitimacy to the approach of treating parents as guilty of abuse without need of investigation. I think, instead, it should make clear that allegations of abuse are to be taken seriously, and investigated so as to inform the court as to the legitimacy of such claims. Only then can the best interests of children be acted upon properly.

It should also be understood by the court that attempting to prevent or limit contact with one parent is to the financial advantage of the other as Child Maintenance is linked to the amount of contact - particularly overnight stays. I appreciate Child Maintenance is reserved and not the subject of the Bill, but it is important for courts to bear this motivation in mind - clearly depriving a child of a parent in favour of financial benefit is not in the best interests of children. It implies that the parent with less contact (usually the father) is more valuable as a source of money than as a parent actively involved in a child's life.

The court should consider if only one party is preventing communication / refusing to attend mediation, if false allegations are made, if attempts at parental alienation may be in progress (it is too late to ware until parental alienation has taken place as this will be distressing to children), if one parent is displaying controlling behaviour / trying to dictate contact.

5. Other requirements of the court

I think it is important that children have the court's decision explained to them objectively. This should not be left to parents, as the parent with the majority of contact can easily misrepresent the contact situation so as to promote parental alienation of the parent who has less time.

I think courts need to realise that damage delaying proceedings can have on children. Generally the status quo of limited contact is maintained during the process. The longer this goes on the more a child is deprived of a good, safe, loving parent and the more damage this can cause to their relationship and mental health. I think a 50/50 shared care starting point as standard would be in the best interests of children, would be reflective of current research, and bring Scotland in line with other progressive countries in the EU and elsewhere.

Courts should also be aware of delaying tactics employed by resident parents or their solicitors such as:

- telling sheriffs that agreement will be reached between lawyers and so the court need not consider a certain issue (eg holiday contact or birthday contact) only to refuse this after the child welfare hearing.
- not submitting documents to the court until the afternoon before a hearing requiring a continuation, delaying proceedings.
- making increasingly extreme allegations as the court does not make orders in line with the desires of the resident parent. This often starts with mental health claims and/or substance abuse claims, followed by allegations of domestic abuse against the parent, followed by allegations of abuse against the children.

Furthermore courts should consider the immense financial burden on parents. While mothers can receive free legal support by claiming domestic abuse without evidence or police involvement, fathers do not receive equivalent support even if they have been abused by the mother. This means fathers in particular often have to spend huge sums of money in court proceedings and the longer these last the more they cost. It is not unusual for child contact cases to cost a father between £20,000 and £100,000 for only a small amount of contact. While I believe it is in the best interests of children to spend time with both parents, this is money that could be better spent on kids, and can result in economic ruin for a father which is not in their kids' best interests.

As mothers often receive free legal support from Scottish Legal Aid Board (SLAB) and assistance from charities such as Women's Aid by claiming domestic abuse (with no need of evidence or to involve police / social services) they have no financial impetus to come to an agreement on child contact - it is in their interests to delay proceedings,

maintaining a limited contact status quo for longer, and forcing financial hardship on the other parent.

I believe the Children (Scotland) Bill needs to address these issues. At present I am worried it will simply reinforce them.

6. Vulnerable witnesses

I agree with this approach. However it must apply equally to both parents and the costs must be met by the court or SLAB. It would be unfair to financially penalise one parent by forcing them to pay for a solicitor on the basis of unproven allegations of abuse.

For example if a father claims a mother is abusive then he should receive equal protection as a vulnerable witness as a mother or child.

7. Contact centres

I do not have experience of contact centres and so cannot comment in detail. However I know they perform an important role in helping many parents, especially fathers, have contact with their children, and can help evidence that a parent is safe and capable.

Contact centres can also provide a safe handover environment where there is high conflict or one parent is at risk from the other (eg if one makes false allegations against the other, or if one is abusive to the other).

Otherwise, unless a parent poses a risk (eg has been convicted of abuse or is the subject of an active investigation by police or social services), I believe that parents should have as close to equal contact as possible, in an unsupervised environment, to enable them to bond properly with their children. It should be noted that new partners of resident parents, and family members of resident parents such as elderly grandparents have unfettered access to children while contact with a good, safe, loving parent is restricted and monitored.

8. Enforcement orders

A court order should be enforced if broken by either parent. If court orders are not enforced they have no value.

I think the correct approach would be to enforce the court order in the first instance, and while this is being enforced an investigation could take place if deemed appropriate. If the investigation occurs first, then this allows a parent to dictate contact, and suggests their views are not only more important than those of the other parent, but are also more important than the law.

9. Contact with siblings

I think it is essential that children are able to form relationships with siblings on both sides of their family. I also think it is important that children are able to form relationships with extended family on both sides. This is critical to their ability to form their own identity.

Shared care (50/50) as the starting point would enable this in the majority of cases.

10. Births outwith the UK

I think it is a fundamental human right that both parents are afforded equal parental rights and responsibilities regardless of country of birth or relationship with the other parent.

12. Children's hearings

I do not have any experience of Children's Hearings and cannot comment.

13. Family Justice Modernisation Strategy / issues not covered by the bill

While the Bill and Strategy make some small specific changes to benefit how children engage with the court system, they both fail to modernise Family Law in Scotland. Instead they either reinforce or allow current outdated approaches to continue, which is at odds with current research and will continue to have negative impacts on children who are likely to be deprived of one parent (normally the father).

As they stand, the Bill and Strategy are a missed opportunity to bring Scotland in line with other progressive countries in the EU and elsewhere by making shared parenting / shared care (50/50) the default starting position in child contact cases.

There is also an opportunity to change the culture in court by changing the language used. Language frames our thoughts. At present sheriffs and child welfare reporters often refer to the parent pursuing contact (most often the father) as 'the non-resident parent' and 'the absent parent.' These terms diminish the role of the pursuing parent, and create two categories of parents, implying the time and relationship with one is more valuable to children than the other. When asking for contact with kids, solicitors, sheriffs, and child welfare reporters often say what the pursuing parent seeks is 'excessive' even when this is a small amount of contact. This diminishes the value of that parent (most often the father), when in reality any contact 50/50 or less should not be termed excessive based on current research. In the context of mothers, children tend to be referred to as 'her children' in child welfare reports and court documents, whereas in the context of fathers children tend to be referred to as 'the children.' This implies children are viewed as belonging to one parent, which is not the case and diminishes the value of the other parent. As mentioned in my comments under point 4, it is common for sheriffs to make statements like 'it is unthinkable that children would not wake up at their home with their mother on Christmas Day' and 'it is normal for a father to see his children every other weekend when they are at school.' Language like that suggests that a father is less valuable as a parent to children than a mother, and also suggests the best interests of particular children in individual cases are not considered, with sheriffs instead defaulting to a 'normal' standard and outdated contact arrangement favouring time with the mother.

I think it is important that the Bill and Strategy acknowledge this current cultural bias, and address it - this needs to be in terms of the language used as well as legislating for modern approaches to child contact based on current research and the examples

of progressive countries. Key to this is taking shared parenting / shared care (50/50) as the default starting point in child contact cases.

Parental alienation is a serious issue, and some services and charities unintentionally support this at present. Other countries, such as Brazil and Mexico, consider parental alienation to be a crime. This could be considered in Scotland to serve as a deterrent rather than to be used for punishment. Parental alienation is very damaging to kids' mental health as they view themselves equally as part of each parent / each parent as a part of them (an element of human psychology that mirrors the equal genetic contribution of each parent). As noted previously, a shared care (50/50) default position would eliminate the risk of parental alienation in the vast majority of cases because one parent would not be in a position to misrepresent the other effectively because the children will have sufficient direct experience of them to draw their own conclusions.

It would be a shame if Scotland continues to operate an outdated Family Law system instead of modernising it. This would have negative impacts on children for years to come, and mean that Scotland lags behind progressive countries in the EU and even States in the US.