

JUSTICE COMMITTEE

CHILDREN (SCOTLAND) BILL

ANONYMOUS SUBMISSION 7

INTRODUCTION

I am married with three children and have been compelled to make a submission to the Justice Committee call for views in relation to the Children (Scotland) Bill. I have never personally been subject to court ordered child contact, however have witnessed the impact the Scottish Family Court system has upon mothers and children, specifically those affected by domestic and sexual abuse. As a former Police Constable, parent, school volunteer and Brownie Guides leader, I am experienced in safeguarding practices and the responsibilities we all have to keep children safe and to protect the vulnerable from harm. However, current arrangements made by family courts, attitudes of the Sheriffs, legal procedures and practices have served only to confirm to me that Scotland's children are not currently protected by our justice system and I welcome, in general, the spirit of changes proposed in this Bill to ensure that children are better protected and placed at the centre of Family Court decisions.

CHILD'S BEST INTERESTS

Currently, the child's best interests are not served by the court. There are instances where Sheriffs in Scotland have stated that while the views and wellbeing of the child are important, the priority of re-instating contact with a father must be the priority. This is a dangerous position, especially in cases where there has been domestic abuse or sexual abuse of the child by the father seeking to obtain contact. There have been instances whereby children have stated to CWRs that they do not wish to ever see their father and these wishes have been ignored by the Sheriff or dismissed as a result of coaching by the mother.

What then is the point of a Child Welfare Hearing to obtain the child's view if these wishes are routinely ignored in favour of those of the father?

By all means increase the number of CWH to obtain the views of a child – but ensure the processes by which these wishes are actually implemented. Otherwise “listening to a child” becomes a mere paper exercise (which it is at the moment).

There are terrifying examples in Scotland and the UK of cases where the best interests of a child have been ignored by Sheriffs. Children are being forced to see their fathers against their will, for the sole purpose of “re-instating contact”. Common sense MUST be used by Sheriffs in family courts. Some fathers are violent, some are un-convicted paedophiles. Many have committed offences against mothers and children, but due to the very private nature of these crimes, convictions are rarely secured, allowing Sheriffs to grant abusive fathers unsupervised contact with their victims. Some Fathers are just simply lacking in parental skill or indeed the will and have had little presence within the family home. Forced contact ordered by the Court can also be frightening for these children and needs to be better managed.

There are examples where court contact has been ordered despite the wishes of the child and in cases of sexual and domestic abuse, where fathers are allowed to arrive at the family home to take the child from a safe environment against their will. There are instances whereby children are forced by a court order to attend at the front door to face their abuser and to state they do not wish to attend for contact. Current arrangements do not ensure the wellbeing of a child, but allow abusive fathers to use court orders as a tool to exercise control over victims.

In cases where allegations of sexual abuse have been made by a child but no conviction is brought due to lack of evidence, this still needs to be taken into consideration by the Sheriff and not simply dismissed as an act of malice by the mother. Examples of this are common throughout the country and children are being failed by Scottish Courts. As a community, we are told to report any concerns about the welfare of children, children are urged at school to “tell” if someone touches them, but in reality, when these children find the bravery to report their fathers and no charges are brought against them, the Scottish Courts do little to protect them in terms once it comes to custody cases. In “no evidence” cases, children are left exposed and vulnerable by the very institutions designed to protect them.

Children will never be placed at the heart of the justice system until their wishes take precedence over those of grown adults. **Sheriffs in Scotland need to be brave. They need to move away from the current presumption that reinstating paternal contact is the ultimate priority of the court.**

FACTORS TO BE CONSIDERED BY THE COURT WHEN MAKING CONTACT AND RESIDENCE ORDERS

At present, the courts do not appear to consider the effects of an order upon the child, the mother or the child’s extended family and the impact the order has upon the day to day lives of the family. In reality, whether a relationship remains intact or has broken down, domestic arrangements tend to be the responsibility of the mother and in many cases, the maternal extended family. Childcare, appointments, schooling, after school clubs, time with cousins and grandparents etc are all organised by mothers or maternal grandparents. Rightly or wrongly, fathers have little knowledge about the day to day running of a family home and many lack either interest, time or inclination to find out. There are thousands of fathers throughout Scotland who don’t know the name of their child’s GP, they have no awareness of clubs the child attends and no knowledge of what a child’s day involves.

When deciding the details of contact, a close examination of how family life is run needs to be made by the court (or the CWR). Father’s may have no regard for the importance of after school clubs, appointments etc yet contact orders are enforced that prevent children from playing with their friends, joining clubs, attending swimming lessons – all of which has been organised by the mother. But often, fathers will fight for contact to take place on days and times that suit them (either their social or work schedule). There are examples when courts have ordered that children be prevented from attending extra-curricular activities so that fathers can have contact at a time that suits them. If the welfare and wellbeing of a child is to be the priority, then a father who is “desperate” to see their children, should be willing to attend at a time to suit the

needs of the child. **Again, this is another example of how at present, Scottish Courts place the needs of fathers over those of a child.**

EXPLAINING DECISIONS TO THE CHILD

I strongly believe that it should be the responsibility of the Court to ensure that decisions made by the Sheriff are explained to the child. At present, presuming the child resides with the mother and it is the father who has taken the mother to court to enforce contact, it is left to the mother to explain to the child what is happening. How can a mother explain to her child (especially in cases where the child does not want to see her father, or in cases of sexual and domestic abuse) that their mother has to appear before the Sheriff and their father has taken her to court to fight for access. How can a mother be expected to explain to a child who desperately doesn't want to see their father, that she is legally required by a court order to force the child against their will. **If a Sheriff is brave enough to force a child to see a parent against their will then the Sheriff should be brave enough to explain it to the child in person.**

COURT DELAYS AND THE IMPACT UPON CHILD WELFARE

Court proceedings by their very nature are lengthy, however, it appears that family courts are particularly protracted. There are contact cases that take years to conclude, often when fathers pursue the mother through courts with the sole aim of "winning" rather than taking time to consider what may be best for their child.

If delays are unavoidable, the impact on the child could be alleviated by adopting a very common sense approach. Following the initial application to the courts by one parent (usually the father), the family should automatically be referred to a contact centre. Contact can be initiated from the very earliest stage, in controlled, safe and neutral surroundings. Both sides know what is expected, the child is safe, contact is maintained and there are independent witnesses to note the suitability/cooperation of each parent. If a child desperately doesn't want to see their father, this is witnessed by independent staff – at present the current situation leaves mothers exposed to charges of contempt of court if a child refuses to go with their father from the home address.

The contact centre should be used routinely for the duration of the court proceedings and ONE final decision should be made following the relevant hearings, reports, evidence etc (be it a decision to continue contact in a family centre or to move contact to unsupervised and out-with). There are examples of court orders being issued, children forced to follow one set of rules, then motions being submitted for changes, new changes implemented, changes to supervision requirements made, times and dates being altered to suit different parties, again, all to the detriment of the child and family life. **Child contact could be less distressing if contact centres were used more wisely by the courts to ensure consistency and fairness while cases were being heard.**

VULNERABLE WITNESSES

I agree with the provision of special measures such as live TV link in contact and residence cases in order to protect vulnerable witnesses. However, this should be

extended to protect all persons. Often there are ex partners who have subjected the mother of their children to years of domestic abuse and controlling behaviour, but have never been convicted by courts. Would these women be protected? Does a father fighting for access to a child have to have a criminal conviction for domestic abuse or sexual abuse of a child in order for the mother/child to be granted special measures when giving evidence? At present, if a woman or a child has made a complaint of domestic or sexual abuse but there has been insufficient evidence to secure a conviction, the victims are forced by the court and ultimately by court orders to confront and face their abusers in court and at their homes during court ordered contact.

Currently, victims of abuse whereby there has been no conviction, are taken to court by their ex partners and subjected to hours (sometimes days) of intense and distressing interrogation by solicitors, questioned as to why her abuser should not be granted access to a child she wishes to protect. All of which takes place in the presence of the abuser, sometimes sitting inches from the vulnerable witness. This is a national disgrace.

To ensure the safety of ALL women and children in Scottish Family Courts, special measures should become the standard.

CONTACT CENTRES

Child Contact Centres should be placed at the heart of the family court system. They should serve as the starting point for all disputes until decisions are made by the Sheriff and court orders issued. Contact Centres should be utilised immediately after a notice for legal action is made by the pursuer. Greater use of Contact Centres would ensure consistency during lengthy hearings, would remove allegations of contempt of court against the mother, would prevent fathers accused of domestic or sexual abuse being able to turn up at children's home addresses, would ensure that fathers who genuinely did want to see their children were given the opportunities to do so. Contact Centres safeguard the rights of both sets of parents and most importantly ensure the safety of a child.

Contact Centres can also be used more wisely. Often mothers dread their ex partners turning up at their home address. The home is a safe place for women and children and court orders often bring fear and anxiety to the doorstep of these families. Contact Centres can serve as a safe, neutral drop off place and preserve the sanctity of home. In practice, a simple handover/drop off would take little resourcing – just a sign in facility at a reception at handover time. Where no issues exist in terms of safety concerns, fathers can just collect their child from the mother at reception, leave and return with the child at a designated time.

Contact Centres do not need to be new, purpose built buildings. Existing facilities could be used at community centres, churches, schools, libraries etc. Often mothers just want a safe place and independent witnesses should anything happen. If Contact Centres were ran from pre-existing buildings within communities, children would also feel more comfortable in attending as they would be used to these environments.

In more complex cases, where contact has to be supervised and take place within the Contact Centre, obviously a greater investment in resources would be required. But

savings would be made in terms of court time and legal aid, as in many instances, fathers who utilise court proceedings and court orders as a means of “punishing” for controlling their ex partners to gain access to a child, would be reluctant to attend at contact centres (their tool of control would have been removed). **Automatic referrals to Contact Centres would quickly separate the genuine fathers desperate to see their children, from those using the court system to control family life and the lives of their wives and children, freeing up the time of courts and the supporting infrastructure such as social services.**

ENFORCEMENT OF ORDERS

I fully support measures to fully and independently investigate potential charges of contempt of court. At present, contempt of court charges rely fully on the evidence brought by the pursuer. The crime is complete the minute contact does not take place and no consideration is given to the reasons. There are instances where mothers have been accused of being in contempt because their children have ran and hidden from their father when he arrives for contact, where children are frightened and too hysterical to go with their fathers and contact does not take place. No Sheriff will ever put on record an order that states a mother must physically force her child kicking and screaming into the car of her father who has attended for contact, because such a statement is dangerous. However, this leaves the law wide open to interpretation to the detriment of the defenders. If a child refuses to attend for contact, is the mother automatically in contempt of court? At present, yes. There needs to be clearer instruction on how mothers can ensure their children comply with the order – in fact, if a court ordered contact renders a child distressed and terrified, there is something inherently wrong with the order, and proof that the Scottish Family Courts do not place the safety and welfare of a child at its heart.

Granted there will be mothers who prevent their children from attending contact due to malice. However, if the custody case has got as far as considering a contempt of court charge, it must be assumed that the mother has good reason for preventing her ex-partner from having contact with the child. No mother who was intent on protecting her child, would risk going to prison lightly and is in fact indicative that there are serious issues that need to be investigated.

Currently, when considering contempt of court, Sheriffs rely on evidence from the mother and father as to what has or has not taken place. If a mother consistently refuses to hand over her child, or a child consistently refuses to see their father, an independent investigation into the circumstances should be initiated by the CWR or similar official. In most cases there will be valid reasons for non contact – the child is frightened, has been a victim of sexual abuse, is unwell, has increased anxiety due to the pressures of the court order, does not know their father, etc.

The investigation should go further than simply attending at the family home to speak with the child and mother. The CWR should seek witnesses such as GP's, teachers, friends, neighbours, group leaders, anyone with knowledge of the family, to provide further insight into the difficulties the child/mother are experiencing in regards to the court order.

Again – if Contact Centres were used more widely, mothers would feel it safer to allow contact to take place, as the access would be supervised and controlled at all times. This would reduce the court time wasted in considering contempt of court cases, brought against women by controlling and abusive ex partners.

If the current system was working, there would be fewer examples of women running away with their children to avoid being subject to court orders that do not ensure the safety and wellbeing of the child.

Sending mothers to prison (many of whom have been the victims of domestic abuse, or who are trying to protect their child from sexual abuse when the justice system has failed to) is not the answer and is certainly not in the best interests of the child.

CONCLUSION

For years there was a widely held presumption that contact and residential rights were always given to mothers and that courts automatically determined that children remain with their mothers. However, over the past two decades due to an increase in awareness of equality, shared parenting and a growing emphasis on the importance of male figures in family life, courts have worked hard to address this imbalance and this is of course welcome.

BUT – this has been at the expense of common sense and has jeopardised the safety and wellbeing of children