



PUBLIC PETITION NO.

PE01589

Name of petitioner

Stewart Currie

Petition title

Independent review of child contact and financial provision post-separation

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to carry out an independent review of all the processes involved in arranging post-separation child contact and financial provision.

Action taken to resolve issues of concern before submitting the petition

Through personal experience, I realised that the Scottish Courts Service was publishing sensitive personal data about children in divorce papers. I alerted the Scottish Courts Service to this with the result that this data will no longer be available to the general public (e.g. through the National Records of Scotland). This led me to realise that small improvements (such as this example) in this policy area can make a big difference.

I consider there are many aspects of the process for negotiating child contact and financial provision post-separation that can be improved for the benefit of both parents and children. I have discussed how to address the broader issues I have identified with stakeholders, organisations and professionals (such as Families Need Fathers, Citizens Advice, a family law solicitor, Scottish Courts Service) and my MSP Margaret Mitchell. I asked Margaret Mitchell MSP to lodge a motion or parliamentary question calling for an independent review. Nothing has been lodged to date but I was encouraged to lodge a petition.

Petition background information

In 2013, the Scottish Government published a report entitled Growing Up in Scotland. In this report, it acknowledges that “levels of non-resident parenthood in Scotland are considerable. Estimates from the 2009/10 Scottish Household Survey indicate that around 21% of households with children (aged 0-15) in Scotland were single parent households. This figure has remained largely static over the last ten years...” It goes on to attribute these figures to trends in divorce and non-marital births (see Chapter 7).

This demonstrates that a considerable number of households in Scotland have been, or will be, affected by separation and subsequent negotiation of child contact and financial provision. Indeed, the fact that the Public Petitions Committee has considered five petitions on this issue in the past 18 months demonstrates that this is an issue of pressing national concern and that these issues require further exploration.

Child contact cases are complex in nature with the following having a major impact upon separated families and consequently the extent to which positive long-term outcomes are achieved:–

1. Views and attitudes parents bring to the process: feelings towards each other; willingness to negotiate fair shared care/contact arrangements; willingness to negotiate within a reasonable timescale;
2. Abuse/violence;
3. How easy it is to access free or inexpensive legal advice, including telephone help lines and alternative dispute resolution such as mediation;
4. Effectiveness of lawyers and courts at timeously and adequately determining the 'best interests' of children;
5. Financial pressures in private or Legal Aid Board cases and the uncertainty and stress surrounding overall costs incurred;
6. Different laws used by lawyers and the Scottish Legal Aid Board in determining financial settlement e.g. Legal Aid (Scotland) Act 1986 ;
7. The extent to which courts or tribunals engage with individuals;
8. Disparity of specialist provision in civil courts throughout Scotland and how this can lead to ambiguity and lack of consistency in dealing with cases;
9. Effectiveness of communication between school and both parents;
10. Current rules stating that only one parent is eligible to receive family allowance / maintenance with no facility to split family allowance – even in cases where parents have a 50/50 division of childcare there will be one parent who receives no support and has to provide maintenance to the other.
11. Failure to adhere to Child Contact Orders and the uncertainty surrounding ways in which courts deal will deliberate and unnecessary breaches of orders.

Due to the complexity of these issues and the range of organisations and professionals involved at different stages, the process is often frustrating, slow and costly to both parents and can result in unsatisfactory outcomes. There is also no guarantee that a co-ordinated or balanced approach is adopted from the outset, or indeed at all.

I consider there are many aspects of the process that could be improved and the best way to address these is by an independent review, which would consider the process and issues holistically and make recommendations to the Scottish Government. Where the issues relate to reserved matters (e.g. family allowance), these should nonetheless be investigated by the independent review because they interact with areas of devolved competence. Any recommendations arising therefrom should suggest the Scottish Government make representations to the UK Government as appropriate (i.e. where legislative changes are deemed to be necessary). I hope this review would lead to a more co-ordinated and clearer pathway of options for parents and facilitate a more holistic approach to the process. I suggest the independent review's remit could include the issues I have highlighted above (elaborated on below).

(Points 1, 2 & 4)

Separation can result in individuals wanting to exert control over others, hurts and conflict, however, all of these can have a negative influence on implementing reasonable and practical routines for children post -separation. This can have an adverse effect on a child's relationships with their parents.

I suggest a realistic timeframe should be implemented for the majority of cases in order to see them through to a satisfactory conclusion. Cases should not proceed directly to court unless there are mitigating circumstances e.g. abduction, serious health issues, violence or unnecessarily withholding a child from contact with the other parent. In these instances, courts should consider hearings as a matter of urgency.

Unless timeframes are set, cases can spiral out of control with no end in sight. This can have long-term negative implications for financial stability and relationships post – separation. I suggest a timeframe of 9 months should be set to conclude a case from initial contact with a lawyer, mediation and court hearings. Anecdotal evidence suggests that cases can take approx 1 year at court, however, often there have been

negotiations for prolonged periods prior to going to court. Obviously, setting these timeframes will have implications for staffing a civil court, however, having consistent staff dealing with cases may form part of the solution to this.

Whilst it may not be possible or practical to have a 50/50 split of care, I would urge the government to provide greater powers / guidelines to sheriffs in order to ensure caring and attentive non-resident parents that present no risk of harm to the resident parent or child have a fairer share of contact with their child facilitated within a reasonable time.

There will undoubtedly be cases involving abuse and involvement of e.g. police/social work and other agencies and they may take longer. However, close monitoring will be required in order that they do not go on indefinitely and needlessly. Research shows that the best outcomes are for children when they receive love, care and attention from both parents. It is prudent, for the sake of the emotional and mental health of children, that this should be facilitated as appropriate.

In all situations, if a request for contact/residence has not been granted, court records should detail reasons as to why this has not happened and these should be available to the individuals concerned. These records should be evaluated and reviewed independently in order to establish disparity between cases and courts.

(Point 3) More signposting and information relating to free or inexpensive services, such as: advertisements on TV, health centres, doctors' surgeries, libraries, community centres, Citizens Advice Bureau, increase resourcing of organisations, such as the Scottish Child Law Centre, possibility of more phone help lines staffed by legally trained people. Information is currently not particularly easy to access and services are stretched. The government or other agencies could consider increasing information available on the Internet. For example, my case has concluded, however, I only recently became aware of the Government's Parenting Plan.

(Points 5 & 6) Whilst it can be difficult for some lawyers to determine costs at the outset, it is widely recognised that family cases are expensive and this can have long-term implications for families post-separation. More comprehensive guidelines and onus on all lawyers to provide cost-efficient ways of providing their services and detailed fee structure would be helpful.

A clear pathway would be helpful and possibly some aspects of the case being dealt with by administrative staff to keep costs down. The involvement of the Scottish Legal Aid Board can pose problems, as lawyers and clients can have difficulties ascertaining their fees, clawback and also their rules as to what parties are entitled to preserve differ from the laws and guidelines followed by lawyers. This makes no sense in cases they are supporting and can increase the length, complexity and overall costs to clients as a result of ambiguity.

(Points 7 & 8) It would be helpful if there was more involvement between sheriffs and parties in civil cases. Perhaps some guidance should be provided to sheriffs to ensure parents are actively engaged in the process. The closure of courts and the lack of specialisation in some areas means there is not a consistent approach to how these cases are being dealt with throughout Scotland. Any system available should be consistent in all areas and more transparent. The Gill Review (2007) and the Courts Reform (Scotland) Act (2014) have already highlighted the need for specialist family sheriffs.

(Point 9) Guidelines should be produced for education authorities, schools and nurseries, about how to deal with school/parent contact post-separation. At the moment, it is clear that many schools are confused about whether they are allowed to share information with both the resident and non-resident parents in these cases.

An example of mishandling of a situation is in Families Need Fathers Scotland's submission to the Equal Opportunities Committee's Fathers and Parenting inquiry (2014): "A father had a court order setting out the times of his contact with his son. He had helped out at the Saturday morning football training for a couple of years before the separation because he was dead keen on football. His ex-wife took the court order to the school and told the head teacher that it meant these were the only times he was permitted to see his son. The head teacher told him he could only help at football

training if his son wasn't there.” This was incorrect on the part of the head teacher, extremely upsetting for the father and confusing for the son as they discovered that the things that were normal for a father to do before separation are subject to other people’s decisions after separation.

When a parent registers a child for a nursery or school, particularly if the other parent is not present, there should generally be an expectation for them also to provide contact details for the other parent. It is difficult for nurseries and schools to communicate with parents when information has been withheld. Generally it is in the child’s best interests for this to happen, however, there will be situations when courts can prevent this. This position is currently unclear and requires to be clarified in order to ensure children are fully supported in their education by both parents and positive relationships and open lines of communication are facilitated between both parents and nursery/school.

(Point 10) The way in which family allowance and child maintenance is calculated and issued requires re-evaluation. Currently only one parent can claim family allowance. There should be a way of splitting this based on number of nights spent with each parent as long as their salaries do not exceed the maximum level. Currently, maintenance goes to the ‘resident parent’, however, this again makes little sense in instances such as when there is a 50/50 split of care, as the calculator still requires the parent with ‘contact’ to give money to the other when they both have the child for the same amount of time. These issues can also cause financial hardship for ‘paying parents’ and there is no requirement for parents receiving money to prove how they are spending it on children.

Unique web address

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01589>

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