The Right Honourable Lord Carloway
The Lord Justice Clerk

Parliament House
Edinburgh, EH1 1RQ

5 October 2015

Ms Sigrid Robinson,
Assistant Clerk,
Public Petitions Committee,
Public Petitions Clerks,
Room T3.40,
The Scottish Parliament,
Edinburgh. EH99 1SP

Dear Ms Robinson,

CONSIDERATION OF PETITION PE1570

The modern approach to the issue of parental contact is to view it not from the standpoint of rights on the part of the parent, but from the viewpoint of the child's best interests. It is not so much that a parent has a "right" to contact, but he/she has a responsibility to maintain contact. The majority of separated parents are able to make residence and contact arrangements with little or no acrimony. However, especially where a separation has been acrimonious, there may be a failure to reach an amicable agreement. In that situation, the matter can be judicially determined, usually by a sheriff, but sometimes by a judge of the Court of Session.

It is not always in the best interests of every child that he/she should have continuing contact with both parents. There are cases where a child's physical or psychological welfare may be put at substantial risk should such contact continue. In some situations the child can become a pawn in the parental battle. In all disputed situations, it will be for the sheriff/judge to determine whether it is in the child's best interests for contact to take place. A hearing to determine *interim* orders can be arranged very quickly, although there may be some delay if legal aid is first sought.

If a court order for contact is not obeyed, the party affected can protest by asking the court to ordain the alleged offender to appear before the sheriff/judge to explain his/her conduct. This is not unusual. The speed at which this is done is to a degree dependent on the party's solicitor, but again it can be very rapid. If the sheriff/judge considers that a parent or other party, including a social worker (see *AB and CD, Petitioners*) [2015] CSIH 25), is wilfully defying the court's order, it may regard that as a contempt of court. A relatively recent reported example of this is *T* v *MJS* [2009] CSIH 44 in which the then Lord Justice Clerk (Lord Gill) set out the principles to be applied (eg at para [45]). In that case the sheriff had imposed a prison sentence and the Court of Session upheld that decision. However, as a generality in civil disputes, the approach of the courts has traditionally been to exercise considerable restraint and discretion before imprisoning parties or others or subjecting them to other penalties for contempt. When considering jailing a parent, the interests of the child will be an important factor. The maximum sentence available to a sheriff is 3 months imprisonment (Contempt of Court Act 1981, s 15(2)(a)). No doubt Parliament could review that. The maximum in the Court of Session is 2 years.

In short, the courts do have powers to deal with recalcitrant parents and can do so rapidly. However, they will often be reluctant to engage the full rigours of the law in a civil dispute. It will always be a matter of judgment for the sheriff/judge in the particular circumstances of the case. Rushing to that judgment may not be a sound judicial approach where the interests of a child are at stake.

I hope this is of assistance to your Committee.