

PE1570/G

Dear Sigrid,

Many thanks for your letter and please accept my apologies for the delay in replying and providing a response to the Scottish Government's latest response.

To properly reply to Mr Wheelhouse's letter, I have attached it below with my response in bold.

Introduction

1. Thank you for the letter of 9 December sent by Sigrid Robinson, the Assistant Clerk to the Committee. I am replying for the Scottish Government as the Minister with portfolio responsibility for family law, although I wish to record that the Minister for Children and Young People also has a portfolio interest in the welfare of children affected. I apologise for not meeting your original deadline: these are serious issues and I wished to ensure that the Scottish Government had given them full consideration.

2. At the Committee's meeting on 9 December, the Committee noted the emergence of a number of petitions dealing with related issues and agreed to write to the Scottish Government seeking its view on the petition and whether the Scottish Government is minded to look at the issue in the round in such a way as called for by the petition.

Looking at issues in the round

3. The Scottish Government has decided to prepare a Family Justice Modernisation Strategy for Scotland. Some more details are contained in the Programme for Government (see page 52, right hand column). The aim of the Strategy is to improve procedures in relation to family cases involving children to ensure they work efficiently and effectively and to ensure that the voice of the child is heard in such cases.

- **In preparation for the Family Justice Modernisation Strategy for Scotland, what agencies has the Scottish Government consulted for this programme and if there were a public consultation for this.**

4. Part of the aim of the Strategy is to outline recent and current work in this most sensitive area; to highlight areas that require further work and to identify work that is already planned. This should ensure that a consistent narrative is available to all and work in a specific area can be put in a wider context. In addition, the Scottish Government will, when working on the Strategy, seek views on what more can realistically be done.

- **In seeking views, I hope the Scottish Government will seek views from a wide variety of agencies and public.**

5. The Scottish Government would be happy to receive any views from the Public Petitions Committee on issues which could be included in the Strategy.

- **Would I be able to participate in this process and express my views?**

6. As Petition PE 1589 is wide ranging, it may be helpful if I also comment briefly on specific points contained in the petition.

Cases not proceeding to court unless there are specific circumstances arising

7. The Petitioner suggests that cases should not proceed directly to court unless there are specific circumstances arising. Where possible, the Scottish Government would encourage separating couples to reach an agreement where arrangements are consensual or resolve disputes in relation to children without going to court. We support bodies such as Relationships Scotland to provide family mediation services. It is also possible in Scotland to draw up legally binding agreements (known as Minutes of Agreement) outwith court. There is a recent research on these agreements. This research concludes, amongst other points, that the use of minutes of agreement in family cases has almost doubled in the last 20 years and children were mentioned in 46% of family minutes of agreements (other family minutes of agreement would just deal with property and other assets). The Family Justice Modernisation Strategy will seek views on what further steps could be taken to encourage cases to be settled out of court. However, some cases will have to go to court.

- **I support and encourage separating couples to reach an agreement via the Minutes of Agreement however this is not always the case. There is also lack of knowledge of the Minutes of Agreement. Solicitors don't propose or recommend the Minutes of Agreement for the obvious reasons, going to court will pocket more for solicitors. Court is always a must for non-resident parents as contact being stopped which also means communication is also stopped with ex partners. According to The Parliamentary Assembly of the Council of Europe, Parent-child separation should only be ordered by a court and only in exceptional circumstances entailing grave risks to the interest of the child, this can be found via this link <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22022&lang=en#>**

Timescales for cases

8. The Petitioner also suggests that cases should be subject to realistic timeframes, to ensure that they are dealt with timeously. The Scottish Government agrees and this is an area that we are keen to see a focus on. A key part of the Family Justice Modernisation Strategy is to consider what further measures could be taken to deal with family cases as expeditiously as possible. It is already the case that judges and sheriffs should deal as expeditiously as possible with cases involving children. In addition, section 27 of the Courts Reform (Scotland) Act 2014 provides that sheriffs principal are responsible for the efficient disposal of business in their Sheriffdom. This replicates a previous provision (section 15) of the Sheriff Courts (Scotland) Act 1971.

- **Absolute important for cases to be dealt with to realistic timeframes however, this must also be the same with legal aid. In my personal situation, April 2016 will be a year I haven't seen my daughter due to legal aid causing many obstructions.**

Non-resident parents

9. The Petitioner suggests that caring and attentive non-resident parents should have a fairer share of contact with their child facilitated within a reasonable time. The Government agrees that both parents should be fully involved in their child's life, as long as this is in the child's best interests. The Scottish Government supports the fundamental principle that in contact cases the welfare of the child is paramount.

- **Shared parenting is absolute beneficial to a child. Contact being stopped is normally carried out by the mother who says it's in the best interest of the child but with nothing to support her claims. As my response to number 7, parent-child separation should only be ordered by a court so this means the mother who wants contact to be stopped should apply to the court otherwise contact cannot be stopped and if it is stopped, I'd strongly urge for the Scottish Government to look at ways to fine the parent therefore I would recommend the Scottish Government to push for this change for contact to only be stopped by the order of the court.**

Reasons for decisions

10. The Petitioner suggests that if a request for contact/residence has not been granted, court records should give reasons. In Scotland, court decisions are set out in interlocutors. Chapter 12 of the Ordinary Cause Rules (which apply in the sheriff courts, where the vast majority of contact/residence disputes are litigated) makes provision about this. In particular, rules 12.2 and 12.3 provide that the sheriff may, and in certain circumstances must, when requested by a party, append to the interlocutor a note setting out the reasons for the decision.

- **This is not always the case. Sheriff's interlocutors do not provide a reason for their decision. Rules must be changed to make sure Sheriff's does provide a reason for their decision, making it honest and accountable for their decision.**

Advice services

11. The Petitioner notes that there should be more signposting and information to advice services. We agree that signposting is important and this is one reason that we provide funding support to Families need Fathers Scotland. In addition, we have made funding available to support a grant-funding programme administered by the Scottish Legal Aid Board. This is made up of a number of projects across Scotland which provide early and effective advice at a very local level to help people deal with complex issues. The Petitioner also mentions the Parenting Agreement for Scotland.

We are currently reviewing this and would welcome any views, from the Committee or stakeholders, on how the revised version could be better publicised.

- **Absolutely important for the Minutes of Agreement to be publicised better and for solicitors to offer this to their clients prior to going to court. This will be much cost effective for the public purse. More guidelines is also required for the agreement such as what happens if the agreement is not complied by either party. This will demonstrate to the court the reason why couples need to go to court following the Minutes of Agreement not fully co-operated and hence the requirement for court intervention.**

Costs of cases

12. On costs of family cases, solicitors are required in civil legal aid cases to provide an estimate of the cost of the case at the outset and to update that estimate as the case proceeds. The Scottish Legal Aid Board (SLAB) sets a case cost limit on each case where civil legal aid has been granted and this cannot be exceeded without SLAB's approval.

- **Solicitors do not provide this information in my personal opinion having dealt with a number of solicitors. They simply apply for legal aid and then it's just a waiting game with constant knockbacks from SLAB and constant chasing up of solicitors to chase SLAB for funding.**

13. The petitioner also raised "clawback" of legal aid. Clawback only applies when property, such as a family home, has been at issue in a case. The rules on clawback do not apply in relation to a case dealing only with contact with children. However, a person receiving legal aid may also be required to pay a contribution from their disposable income and/or disposable capital, and they may have to pay their opponent's expenses.

More involvement of parties in civil cases

14. The Petitioner notes that there should be more involvement between sheriffs and parties in civil cases. The petition is focussed on contact and residence cases. Rule 33.22A of the Ordinary Cause Rules applies to those, and makes provision for a Child Welfare Hearing at which "all parties (including a child who has indicated his wish to attend) shall, except on cause shown, attend". This is intended to provide an opportunity for the sheriff to "seek to secure the expeditious resolution of disputes in relation to the child by ascertaining from the parties the matters in dispute and any information relevant to that dispute".

Specialisation

15. Under section 34 of the Courts Reform (Scotland) Act 2014, it is for the Lord President of the Court of Session to determine categories of sheriff court case which the Lord President considers suited to be heard by specialist judiciary. The Scottish Government will discuss this issue with the Lord President, as appropriate.

Education

16. On the involvement of parents in education, the Cabinet Secretary for Education and Lifelong Learning has just announced a review of the impact and success of the legislation on the involvement of parents in their children's education. The review will be led by the National Parent Forum of Scotland. There is existing guidance on the Scottish Schools (Parental Involvement) Act 2006 and the involvement of non-resident parents and other parents/carers (please see paragraphs 18 to 20 of section C of the guidance).

- **Personally, parental involvement in their child's education doesn't really exist for non-resident parents. Although I am involved in my daughter's parents council, that is all I am involved in. I do not receive text messages from the school to inform me what is happening or when school is closed etc. I was informed text messages is only available to the resident parent which I thought discriminated me as a father.**

Enforcement of contact orders

17. I am aware that this petition has been conjoined with PE 1570, which raises issues about the enforcement of contact orders. The then Lord Justice Clerk, Lord Carloway, has responded in this area, with some very informative comments. The Scottish Government is aware that some other jurisdictions in the EU have legislated to provide more ways in which contact orders can be enforced. For examples of alternative approaches, other jurisdictions deploy one or more measures such as criminal offences, civil penalties, requiring parents to attend parenting programmes and requiring one parent to compensate another if a parent can show that a breach has led to an economic loss (e.g. cancellation of a holiday). Enforcement in this area is never going to be straightforward, as there is an overriding need to do what is best for the child and there could be a claim that mitigating circumstances explain a breach of a contact order or legal agreement. The Scottish Government will keep this area under review and intends to invite key bodies to a round table to discuss the issues further.

- **Enforcement of contact orders can be straightforward from the offset. Information should be provided to parties on the consequences of breach of orders. Sheriffs have everything in their disposal to enforce an order but do not in their power use it. Yes, always putting the child's best interest as a priority but this is when resident parents think they are God as they have the child and they can do whatever they like. In my experience, I was told by the resident parent that if they're not happy, they will change the order. Order should be complied with some flexibility for both parents, not always the case and even the Order is in place, I feel sometimes, it does not protect and serve as it is supposed to do. Perhaps the committee would write back to the Lord Justice Clerk to request statistics on the number of contempt proceedings concerning child contact in sheriff courts and court of sessions and the outcome of these cases. Also the number of child welfare hearings dealing with contact in Scotland within these two courts.**

Child benefit and child maintenance

18. Child benefit and the statutory child maintenance system are reserved to the UK Government. The UK Government have provided us with some comments, which I attach as an annex for the Committee's information.

- **I fully agree that child benefit, child maintenance and child tax credit should be shared where contact is shared. However, my worry is when it comes to financially, resident parent will stop shared contact if they want all the money. It is only sensible that in shared parenting, everything is shared, it's what in the best interest of the child.**

While it is welcome that the letter from the Minister states that a Family Justice Modernisation Strategy is being prepared, is it possible for the Public Petitions Committee keep these petitions open until the strategy is published, in order to assess how well the various points raised by recent petitioners are addressed.

A number of questions still haven't been answered. Number of factors from Families Need Father's response that still need answered. Although Mr Wheelhouse's response sound positive and could lead a positive direction, I just hope it's not all talk and no action.

I'd also like to point out one additional piece of information to the Committee and the Scottish Government, relating to the Council of Europe's recent resolution <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22220&lang=en>

The Parliamentary Assembly of the Council of Europe has passed a resolution calling on member states to better recognise and positively value the role of fathers and do various things to support shared parenting for the benefit of children. [Resolution 2079](#) stresses the benefits for children of the involvement of both parents in their upbringing, and calls on member states ensure that family law foresees, in case of separation or divorce, the possibility of joint custody of children, in their best interests, based on mutual agreement between the parents.

States should remove from their laws any difference based on marital status between parents who have acknowledged their child, such as the non-recognition of the rights of unmarried fathers in Scotland whose children were born before May 2006.

States should introduce into their laws the principle of shared residence following a separation, limiting any exceptions to cases of child abuse or neglect, or domestic violence, with the amount of time for which the child lives with each parent being adjusted according to the child's needs and interests. States should take all necessary steps to ensure that decisions relating to children's residence and to access rights are fully enforced, particularly by following up complaints with respect to failure to hand over a child.

States should encourage and, where appropriate, develop mediation ... in order to make the parents aware that shared residence may be an appropriate option in the best interests of the child, and to work towards such a solution, by ensuring that mediators receive appropriate training and by encouraging multidisciplinary co-operation based on the “[Cochem model](#)”.

The committee should also seek further information from the Scottish Courts and Tribunal Service to provide a picture of what is happening at the moment and provide a baseline from which to assess the impact of future changes in private law family cases. Some suggested measures are the numbers of family actions in Scottish courts, the number of child welfare hearings per case, the number and length of proof hearings in such cases and the time taken for written judgements to be issued in such cases.

I fully support the Committee and its work on these petitions and I thank them personally.

I would be happy to further engage with the Committee and the Scottish Government in future programmes and to provide further input.

Yours sincerely,

Alan Lee