



The Scottish Parliament
Pàrlamaid na h-Alba

PUBLIC PETITIONS COMMITTEE

By Email:

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25 February 2016

Dear Minister,

CONSIDERATION OF [PE1589](#)

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.

CONSIDERATION OF [PE1570](#)

Calling on the Scottish Parliament to urge the Scottish Government to change or review the laws that govern parental rights and child access, and their implementation, to ensure the resident parent cannot stop the non-resident parent from contact with his/her child.

Many thanks for your letter of 14 January 2016 in relation to petitions PE1570 and PE1589. You stated in the letter that you would welcome any views from the Committee on issues which could be included in the Family Justice Modernisation Strategy that the Scottish Government has decided to prepare. This letter sets out our views, based on the issues that have been raised with us through a number of petitions.

However, before addressing any specific issues, the Committee requests that in preparing the Strategy, the Scottish Government ensures that all those who have submitted petitions to the Scottish Parliament on the issues of parental contact with children are afforded the opportunity to contribute their views.

Availability of information

The Committee recognises that the issues in relation to family cases involving children can be complex and that it is important to ensure that guidance and support is available to assist all parties in such cases.

Your letter refers under a number of headings to sources of support and information that are supported by Scottish Government funding, both for cases that are settled without court intervention and for those which go to court.

We agree with you and Mr Currie that signposting of resources providing information and advice is important. You indicate that you would welcome any views, whether from the Committee or others, on how the Parenting Agreement for Scotland could be better publicised once the revised version is published. This is an area where we consider that engaging with individuals who have personal experience, such as the petitioners, would assist the Government to determine how information can be best publicised.

In general terms, however, we are of the view that information that is provided to support people who are experiencing relationship breakdowns where children are involved should provide signposting to other sources of information that may be assist in the efficient and expeditious resolution of cases to ensure appropriate contact arrangements can be put in place to best serve the interests of children.

Reasons for decisions

Your letter refers to Chapter 12 of the Ordinary Cause Rules and the provisions for appending a note setting out the reasons for decisions to an interlocutor.

The petitioners for both PE1570 and PE1589 commented on this. The comments queried whether it was always the case that the reasons for a decision were appended to an interlocutor and also whether there were ways of making the rules clearer for parties involved in a case. This could involve more clearly setting out what to expect at court and what entitlements a party has. As one petitioner notes “Attending court is often a difficult and traumatic experience for people not entered into lightly so aspects of the process which can be made simpler should be.”

In considering this the Committee suggests that you may wish to consider whether the Rules could provide for a note of the reasons for decisions to be appended to interlocutors in all family cases involving child contact.

Enforcement

The Committee welcomes the Government’s intention to invite key bodies to a round table to discuss issues of enforcement further.

PE1570 in particular addresses the issue of enforcement of child contact orders and the petitioner has commented that “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.”

We have noted your reference to examples of legislation in other jurisdictions where

a penalty of some form can be applied to the non-compliant parent. While not taking a position on this matter, the Committee agrees that the welfare of the child should be the most central consideration in determining the nature of any penalty that may be applied.

Costs

Both the petitioners comment on the issue of costs. Mr Currie's view is that there is a lack of clear guidance available to the parties involved in a case, other than solicitors. In making this observation, Mr Currie refers to the Law Society of Scotland's discussion paper on legal assistance which states that "The existing system lacks clarity, is inefficient, and is administratively burdensome. It leads to unnecessary time and resources being spent by SLAB and solicitors at every stage of the process."

Mr Lee states that, in his experience, information about estimated costs has not been provided. He characterises the process for seeking legal aid as "just a waiting game with constant knockbacks from SLAB and constant chasing up of solicitors to chase SLAB for funding."

The Committee invites you to consider these observations in respect of legal aid as part of the development of the Strategy.

Data and evaluation

Your letter sets out that 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. The Committee considers that the Strategy should clearly set out what data about family cases involving children should be captured and how this data will be evaluated to demonstrate how efficiently and effectively the system works.

The Committee also invites you to consider the proposal from Mr Currie that the Scottish Courts and Tribunals Service actively pursues introducing a process of service evaluation for those who have attended court.

Specialisation

Your letter explains that the determination of the court cases which should be heard by specialist judiciary is a matter for the Lord President and that the Scottish Government will discuss this with him as appropriate. The Committee suggests that any such discussions with the Lord President should include the consistency and monitoring of cases involving child contact that are heard by specialist judiciary throughout Scotland.

Education

The Committee notes the review being led by the National Parent Forum of Scotland and the existing guidance on the involvement of non-resident parents. The Committee notes that the guidance discusses the duties and expectations that fall on education authorities and schools. The Committee's view is that any review of this guidance should consider how it is being applied to determine whether there is

consistent application by education across authorities in Scotland.

Child benefit and child maintenance

We understand that these elements are reserved and note the information you have provided from the UK Government. The Committee hopes that any comments on these issues that arise from the work the Scottish Government undertakes in producing the Strategy can be provided to the UK Government for its consideration.

For your information, the Committee has agreed to close the petitions, under Rule 15.7, on the basis that the Scottish Government is committed to undertaking a review of the issues raised in the petition within the context of the Family Justice Modernisation Strategy.

Yours sincerely,

Michael McMahon MSP
Convener
Public Petitions Committee