

PE1529/B



Ned Sharratt
Assistant Clerk
Public Petitions Committee
Room T3.40
The Scottish Parliament
Edinburgh
EH99 1SP

Also by email: petitions@scottish.parliament.uk

31 October 2014

Dear Ned,

Consideration of Petition PE1529

Karen Gibbons has passed to me a copy of your letter of 1 October 2014 asking for the Family Law Association's view on the provision of Legal Aid in cases where a parent is seeking an existing contact order to be adhered to.

Unfortunately many parents cannot agree on the time their children should spend with each of their parents. Raising Court proceedings to ask the Court to regulate the arrangements for contact should be a last resort. Court orders for contact are only granted if it is better for the child that an order is pronounced than that no order be made at all. As you are aware the welfare of the child is paramount when the Court is considering making any orders in respect of that child.

It is usual for interim orders to be made at Child Welfare Hearings whereby the contact is built up and increased gradually. If the resident parent fails to adhere to the interim contact order the Court can deal with the defaulting party at the next Child Welfare Hearing. In the event the case is sisted the parent in whose favour the interim contact order has been granted can ask their Solicitor to recall the sist and ordain the defaulting parent to appear before the Court to explain their failure to obtemper the order. As long as the parties in receipt of Legal Aid remain entitled to Legal Aid their Legal Aid remains in place for the duration of the Court action. If the parent in whose favour the contact order has been granted believes that the resident parent may fail to adhere to the contact order in the future they often ask that the action be sisted for settlement rather than bringing the action to an end. This can

result in Court actions “hanging over the heads” of parents for years and does not assist the parties to rebuild their trust in each other and move on with their lives.

When final contact orders have been made by the Court and these are not being adhered to, it is important that parents are in a position to return the matter to Court to have this addressed. Legal Aid must be made available to the parent who wishes to have the contact order adhered to if they are financially eligible for Legal Aid. If Legal Aid is not made available in these cases then the contact order would be meaningless. Not only is this not in the best interests of the children but the expense incurred in the original action to obtain the contact order will have been wasted.

Breach of a contact order is a contempt of Court and it is for the Sheriff to decide as to how that contempt of Court should be punished or if the defaulting parent’s actions are justified.

I do hope that the Public Petitions Committee agrees that Legal Aid should be made available for parents seeking an existing contact order to be adhered to.

Yours sincerely

Jackie Polson
Committee Member